

THE RELATION BETWEEN RAWLS' TWO PRINCIPLES OF JUSTICE:

A CRITICAL EXAMINATION.

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degree of Master of Arts in
Political Science.

by

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PREFACE

John Rawls' principal aim in A Theory of Justice¹ is to explicate a moral theory, justice as fairness, based on an interpretation of the social contract, which offers a substantial alternative to utilitarian thought in general. Rawls concentrates on justice because, in his opinion, it is the most important virtue of the arrangement of the basic structure of society. Two main principles, namely, (1) the principle of liberty and (2) the principle of fair equality of opportunity and the difference principle, are the prime constituents of Rawls' special or ideal conception of justice.

I intend to discuss the content and the ordering of the main principles from the perspective of those formulating them. There are five parts to my analysis. In Chapter One the main themes and the overall plan of A Theory of Justice are described. Chapter Two is devoted to a discussion of the original position which is the starting point of Rawls' theory. The principle of liberty, and its priority, are the subject of Chapter Three. Chapter Four focuses on both the principle of fair equality of opportunity and the difference principle, the relation between these principles, and the relation between each part of the second principle and the principle of liberty. Finally, in Chapter Five, the conclusions of the previous chapters will enable me to comment on the suitability of these principles as the standard of a just society. I shall also indicate two

problems to be overcome before any society can be assessed in terms of this standard.

When examining Rawls' arguments for the principles of justice, I shall, at times, combine philosophical criticisms with political objections. Some philosophers in particular, might object to this method.² However, this is the method that Rawls himself uses, since " . . . the soundness of the theory of justice is shown as much in its consequences as in the prima facie acceptability of its premises."³ Brian Barry lends credence to this view, for he comments that " . . . in choosing principles to apply to a society one has to look at the implication of any given principle for the society, and ask whether one prefers to have a society in accord with this principle or some alternative."⁴ In order to come to terms with Rawls on his own ground it is often necessary to follow the methods he uses, even if it does necessitate treading on some philosophers' toes.

NOTES

1. John Rawls, A Theory of Justice (London: Oxford University Press, 1972).
2. See, for example, Alan R. White, review of Contemporary British Philosophy (Fourth Series) edited by H.D. Lewis in The Philosophical Quarterly, 27 (April, 1977), p. 182.
3. Rawls, A Theory of Justice, p. 95.

NOTES (Cont'd)

4. Brian Barry, The Liberal Theory of Justice (Oxford: Clarendon Press, 1973), p. 121.

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CHAPTER ONE

THE BASIC STRUCTURE OF RAWLS' ARGUMENT

The most important subject of justice is the basic structure of society. All major social, economic and political institutions are the constitutive elements of such a structure. These institutions determine a person's rights and duties, as well as his share of economic and social benefits. Whether one is poor or wealthy, illiterate or educated, depends to some extent on the nature and arrangement of the basic structure of one's society. And this is where unfairness can occur. Institutions may be organized so that a person, who has spent his formative years in poverty-stricken surroundings, is likely to face the prospect of a rudimentary education followed by limited opportunities of employment. Examples like this should be the exception rather than the rule. We can only eradicate the most fundamental forms of injustice by directing our attention to the basic structure of society. In his most recent article, Rawls comments:

The role of the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and corrected, the social process will cease to be just, however free and fair particular transactions may look when viewed by themselves.¹

The immediate problem, and one of the principal aims of A Theory of Justice, is to formulate principles of justice to determine how the major institutions of a society

can best be arranged in a single system that is just. Rawls uses a social contract as the heuristic device for choosing these principles. Members of society are placed in an hypothetical situation where they have to agree in advance to the arrangement of their basic structure. Rawls fully explains his intentions as follows:

Thus we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society.²

An initial situation needs to be created whereby all members of society have an equal chance to influence the choice of principles of justice. For Rawls, justice as fairness means that the appropriate principles are selected in an initial situation that is fair. This situation is the original position. All those in the original position are treated equally as moral persons; that is, as persons who have both a conception of the good (their plan of life), as well as the capability to choose principles of justice and to adhere to them. Persons placed in this hypothetical situation are described variously as individuals (but not 'isolated' individuals), rational agents, heads of families and heads of generic lines. I shall discuss what Rawls means by these terms at a later stage in this chapter. In my account, I shall refer to those in the original position as 'negotiators'.

Although the negotiators may be equal as moral persons.

in the original position, they might differ in many other ways; for example, intelligence, ability, income, wealth, status, class and race. Now factors like these cannot be allowed to influence the choice of principles of justice. Whether a person is intelligent or not is neither just nor unjust. It is a natural fact. But injustice can occur if institutions pay undue attention to such facts. An aristocracy is unjust because the circumstances of a person's birth, a natural fact, are made an ascriptive basis for belonging to the privileged class. Furthermore, if a negotiator is well aware of his own strong and weak points, he is very likely to select principles of justice that play to his strengths and diminish his weaknesses. To obviate differences of natural fortune and social circumstances, negotiators are placed behind a 'veil of ignorance'. Certain kinds of information are disallowed. A negotiator knows nothing about himself, (or others), including the details of his plan of life and the generation to which he belongs. In addition, he is unaware of the particular facts of all societies; for example, their stages of economic development, geographical characteristics and types of political culture. But negotiators have access to any general law or theory, and on the basis of this information alone, they are to formulate principles of justice for society. The veil of ignorance ensures that all negotiators are equally disadvantaged. This is the Archimedean viewpoint: any individual of any generation in every society can become an hypothetical negotiator in the original position by accepting the

conditions of the veil of ignorance.

In addition to limits on information, Rawls makes a number of assumptions about the negotiators:

(a) They know that circumstances of justice prevail in their society: there is a need for regulatory principles, since members of society do not all have the same conception of justice. Moreover, everyone is likely to accept the formulated principles.

(b) Although a negotiator is trying to advance his plan of life without any concern for the life-expectations of his contemporaries (in Rawls' terms, negotiators are 'mutually disinterested'), he does consider the interests of at least one other person in a succeeding generation. This is why Rawls refers to the negotiators as heads of either families or generic lines, or as 'continuing strands'.

(c) The negotiators are capable of a sense of justice; that is, once the principles have been chosen, and accepted by all members of a society, each person can depend on himself and others to abide by them.

(d) A negotiator is assumed to not envy others who turn out to have a higher index of primary goods than himself, provided the difference between his index and others is neither too great nor attained by unjust means.

(e) In selecting principles of justice, a negotiator will try to advance his plan of life as best he can. One of the conditions of the veil of ignorance is that a negotiator has no idea of the content of his plan of life. But he does know of the existence of primary goods. Rights,

liberties, opportunities, income and wealth are examples of social primary goods. Health, intelligence, vigour and imagination are regarded as instances of natural primary goods. The basic structure is mainly concerned with social primary goods. Irrespective of his plan of life, a negotiator will need primary goods, either social or natural, or both. Not all primary goods will be of the same importance to everyone. To avoid comparisons of various goods, they are assumed to form an index. As a negotiator is assumed to prefer more rather than less of these goods, he can best promote his plan of life by trying to obtain as high an index of primary goods as possible.

The single-minded pursuit of a plan of life is the reason why Rawls refers to his negotiators as 'rational' agents. For Rawls, 'rational' means taking the most effective means to given ends. We have just observed that this is what a negotiator tries to do when he aims to secure his conception of the good, whatever it might be. The deliberation about a conception of the good in terms of primary goods, and in the absence of any additional particular information, is what Rawls calls the 'thin theory of the good'.

Having outlined the conditions of the original position, we are now able to discuss the choice of principles of justice. Three different sets of principles can be selected. After deciding on principles of justice for institutions, negotiators can then proceed to choose principles for individuals as well as for laws of nations, together with priority rules for regulating the different sets of principles.

However, Rawls confines his discussion to a selection of principles for institutions of society. For these purposes, a society is assumed to be a closed system, isolated from other societies. In addition, we are concerned with choosing principles of justice for a well-ordered society; that is, everyone is presumed to act justly and to do his part in upholding just institutions. Rawls refers to this as 'strict compliance theory'. In later articles, Rawls also assumes that everyone has normal physical needs, so that there are no problems about special health care. ³

The negotiators also take account of the formal constraints of the concept of right. Principles of justice have to be formulated in a certain way if they are to be adequate ethical principles. Rawls summarizes these conditions as follows: ". . . a conception of right is a set of principles, general in form and universal in application, that is to be publicly recognized as a final court of appeal for ordering the conflicting aims of moral persons." ⁴

In their attempt to formulate principles of justice, negotiators compare various conceptions of justice on the basis of general information at their disposal. The range of alternatives is enormous for, in theory, those in the original position can consider any conception of justice. But Rawls mostly compares his theory to various interpretations of the utility principle, although intuitionism, perfectionism and egoism are also discussed.

At a first glance, a negotiator in the original position can best advance his index of primary goods, and

be assured he is no worse off than anyone else, by selecting the following egalitarian principle: all members of society are to receive the same index of primary goods. Furthermore, this index must be as high as possible. This is the 'benchmark of equality'. But a negotiator might not be content with this principle. An inequality of primary goods could be advantageous to all if, for example, it resulted in increased economic growth accompanied by greater prosperity and employment. In sanctioning inequalities, however, the negotiator must be careful, since he is unaware of the particulars of his own situation. Once the veil of ignorance is removed, he might well find himself in unfortunate circumstances. To allow for this, those in the original position formulate the following principle:

All social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.⁵

This is Rawls' general theory of justice. It is devised on the basis of the maximin principle; that is, the minimum is maximized. The negotiator formulates the principle from the perspective of the least advantaged representative man (in other words, a person who is representative of the least advantaged group).

All members of a society might rest assured in the knowledge that, irrespective of their place in the socio-economic hierarchy, they have a certain minimum of food, clothing, shelter and income or wealth. Such a society

is said to be in favourable circumstances. In this case, a negotiator draws a broad distinction between the primary goods associated with civil and political liberties, and those concerned with social and economic factors. Since great importance is attached to the primary good of self-respect, the protection of liberties takes precedence over all other goods. The least advantaged representative man is no longer willing to accept a lesser liberty for an increase in wealth. The negotiators express the principles of justice for a well-ordered society in favourable circumstances as follows:

First Principle.

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
[principle of liberty]

Second Principle.

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle [difference principle], and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity [principle of fair equality of opportunity].⁶

This is Rawls' ideal or special theory of justice. Unless stated to the contrary, my discussion is confined to the ideal theory.

The principles of justice are ranked in a lexical or serial order. That is to say, a second principle cannot come into operation before the first has been implemented, a third cannot be applied prior to the second, and so on. In Rawls' theory, the principle of liberty is ranked prior to both the principle of fair equality of opportunity and the

difference principle. Furthermore, the principle of fair equality of opportunity takes priority over the difference principle.

The main difference between the general and ideal theories of justice is that liberty is absolutely prior to all other primary goods in the latter, whilst in the former it can be traded-off for other goods. But the tendency of the general theory is to aim for favourable circumstances in society to eventually permit the establishment of lexically ordered principles. A reduction of liberty, at the expense of economic and social advantages in the general theory, will only be tolerated if it is a necessary step on the road to achieving these minimum conditions. The general theory of justice is the special one in embryo.

Two points should be mentioned at this stage. First, in Rawls' theory (both general and ideal), 'right' is prior to 'good'. Negotiators, behind the veil of ignorance, act on the basis of the thin theory of the good to decide on the arrangement of the primary subject of justice, the basic structure of society. For this reason, Rawls classifies justice as fairness as non-teleological or deontological. He adds that

. . . deontological theories are defined as non-teleological ones, not as views that characterize the rightness of institutions and acts independently from their consequences. All ethical doctrines worth our attention take consequences into account in judging rightness. ⁷

In teleological theories (for example, utilitarianism) the right is that which maximizes the good. This is not the case in justice as fairness, and so, in Rawls' opinion, here

is one fundamental difference between his contract theory and utilitarianism.

The second point concerns the role of pure procedural justice. All are treated equally as moral persons in the original position. Principles of justice are chosen in an initial situation that is fair; consequently, the principles themselves will be fair. There are no independent criteria for deciding whether or not the best principles have been chosen. Alternatively, " . . . there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed. . . . A fair procedure translates its fairness to the outcome only when it is actually carried out."⁸ In Rawls' terms, the principles of justice are fair because they are the result of a fair procedure. We can summarize this procedure by saying that negotiators, behind the veil of ignorance in the original position, decide on such principles by assessing various conceptions of justice in a rational manner.

Once negotiators have chosen principles for the basic structure, they can consider how to apply the ideal conception of justice to a society. All in all, there is a four stage sequence: (1) principles of justice, (2) constitutional convention, (3) legislative assembly and (4) adjudication and administration. Rawls emphasizes that this procedure is part of the theory of justice. It is neither an account of a political system nor a description of how institutions actually operate. The institutions of some

form of constitutional democracy are assumed. No significance is attached to this, for any set of institutions complying with the requirements of both the two principles of justice, and any further relevant stages, will be just.

The negotiators now move to the second stage, the constitutional convention. They have to draft a constitution specifying the role of major governmental institutions, as well as ensuring the protection of everyone's civil and political liberties. The constitution safeguards what was guaranteed by the principle of liberty. Consequently, delegates to the convention are constrained by the two principles of justice, which act as an independent standard in assessing proposed schemes. The veil of ignorance is partially lifted to admit relevant information. In addition to knowing general laws and theories, the negotiators have access to the general facts of their society; for example, its natural circumstances and resources, level of economic development and political culture.

At the third stage, the legislative assembly, the justice of laws and policies is assessed. The formulation of statutes has to conform to the requirements of both the principles of justice and the constitutional convention. The second principle of justice is the focus of attention. Legislation is mainly concerned with promoting the interests of the least advantaged members of society. The protection of the principle of fair equality of opportunity and the regulation of social and economic policy are the central problems of this stage. To enable these tasks to be carried

out, the veil of ignorance is largely removed to permit the negotiators to know the full range of general economic and social facts about their society.

The fourth and final stage is the application of rules to particular cases by judges and administrators. All constraints of the previous three stages apply. Since the principles of justice have been applied to all aspects of the basic structure, there is no necessity for the veil of ignorance. Everyone has access to all facts. Full information is required if we are to adjudicate disputes about the application or transgression of rules and regulations by individuals. Individuals more than institutions are the subject of the final stage. I have already mentioned that justice as fairness is worked out on the basis of strict compliance theory. But in cases where persons do not do their part in upholding just institutions, partial compliance theory (for example, a theory of punishment) is required. Although Rawls does consider some of these problems, I shall not discuss them here, since my analysis is confined to his strict compliance theory, and in particular with the first stage, the selection of principles of justice.

NOTES.

1. John Rawls, "The Basic Structure as Subject," American Philosophical Quarterly, 14 (April, 1977), p. 160.

NOTES. (Cont'd)

2. Rawls, A Theory of Justice, p. 11.
3. See John Rawls, "Some Reasons for the Maximin Criterion," American Economic Review, LXIV (May, 1974), p. 142, and "Reply to Alexander and Musgrave," Quarterly Journal of Economics, LXXXVIII (November, 1974), pp. 639-640.
4. Rawls, A Theory of Justice, p. 135.
5. Ibid., p. 303.
6. Ibid., p. 302.
7. Ibid., p. 30.
8. Ibid., p. 86.

CHAPTER TWO

THE ORIGINAL POSITION

The derivation of the principles of justice depends on the conditions and requirements of the original position. The fairness of the principles is subject to the fairness of the procedure in pure procedural justice. In Rawls' theory, the procedure is established by the original position. If there is something amiss with the interpretation of this initial situation, the argument for justice as fairness collapses. Consequently, the original position plays a crucial role in Rawls' argument. We need to examine both conditions (limits on knowledge) and requirements (motivational assumptions) to assess the appropriateness of the original position.

Limits on Knowledge.

In the previous chapter, we observed how the type of information made available to negotiators behind the veil of ignorance is strictly regulated, particularly when principles of justice are being chosen. Two broad categories of knowledge are unavailable in the original position; first, the negotiator's knowledge of his own situation (natural facts and social circumstances), as well as those of others, and secondly, facts about all societies, including the one in which he lives.

The omission of natural facts means that a negotiator is unaware of his abilities, skills, intelligence, psycho-

logical propensities (for instance, whether he is cautious or foolhardy), and so on. Not permitting information about social circumstances rules out any consideration of a negotiator's economic standing, social status, as well as the details of his plan of life. According to the restrictions of the second category, the social, economic and political structure and development of any society remain unknown, as does the stage of civilization and culture that has been attained. In addition, " . . . the course of history is closed to [the negotiators]; they have no information about how often society has taken this or that form, or which kinds of societies presently exist." ¹ If the course of history remains closed to the negotiator, and if he is unaware of his own circumstances, then he does not know to which generation he belongs. David Richards comments that the negotiators are denied access to all this knowledge because " . . . the choice of moral principles by definition implies that the choice is made without favouritism to one's class or race, clan or caste, talent or nationality." ²

We can now consider what information is available in the original position. Rawls comments:

As far as possible, then, the only particular facts which the parties know is that their society is subject to the circumstances of justice and whatever this implies. It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice. There are no limitations on general information, that is, on general laws and theories . . . ³

Do the negotiators have sufficient information to enable them to compare various conceptions of justice and to choose principles for the basic structure? There seems to be uncertainty about the kind of permissible knowledge in the original position, despite the clarity of the view expressed above. In the above passage, Rawls is adamant that the only particular fact known to the negotiators, is that the circumstances of justice obtain. (I shall return to this fact later on in the present chapter.) All other particular details remain unknown. I shall attempt to explicate another class of particulars, apart from the one specified by Rawls, which is allowable in the original position. This further class does not introduce any unfairness: on the contrary, it is instrumental in countering some criticisms of the veil of ignorance.

The additional class of particulars can best be explained by considering the following statements:

- (1a) I am greedy
- (1b) You are greedy
- (1c) He, she is greedy, they are greedy
- (2) Someone is greedy
- (3) Some people are greedy
- (4) Many people are greedy
- (5) All people are greedy

Each of the above statements offers some sort of information. Only their subjects differ. Would the knowledge conveyed by any of these statements be available to those in the

original position? (1a) would be excluded immediately, since the negotiator must remain unaware of his special psychological propensities. (1b) and (1c) are also ruled out because they identify specific individuals. This is not permitted to prevent the possibility of formulating principles of justice in favour of some individuals at the expense of others. The information denoted by statements (3), (4) and (5) is open to negotiators, for each of these statements is general in form (that is, each has a plural subject) and does not identify specific individuals. The class of general facts and theories differ in degree of generality. In this case the order of generality is (5) > (4) > (3). But the variation in degree provides no obstacle to their all being available behind the veil of ignorance. Rawls states this clearly in the latter portion of the previously quoted passage: "There are no limitations on general information, that is, on general laws and theories " ⁴

We can now return to statement (2). It is a singular fact, since its subject is singular, but it is unlike (1)*, for it does not identify any one particular individual. Furthermore, it is completely unlike the one allowable particular fact; that is, whether circumstances of justice are present or absent in a society. The class of particulars, typified by statement (2), is not considered in Rawls' theory and we have to decide if it is

* (1) refers to (1a), (1b) and (1c).

allowable in the original position. As (1) refers to specific or identifiable individuals, I shall refer to this class as 'personalized particulars'. Type (2) statements are particular in form, although they do not identify specific individuals: this class will be referred to as 'hypothetical particulars'.

In order to see why certain types of knowledge are available in the original position, and others are not, it is necessary to recall the rationale for the veil of ignorance. Rawls says the veil

. . . ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. 5

The class of hypothetical particulars would not enable the negotiators to shape the principles of justice to their advantage, since these particulars neither identify certain specific individuals nor refer to facts which would only benefit particular individuals. To say that 'someone is hungry' is more speculative than factual; a negotiator does not know who is hungry, let alone that he is experiencing telltale pangs. Instead of stating that a negotiator only knows general laws and theories together with an awareness of the circumstances of justice, we can say that he is entitled to any information, if it does not thereby enable him to choose principles in accordance with

his own particular circumstances. There is evidence for this view in A Theory of Justice. Rawls comments that " . . . any knowledge that is likely to give rise to bias and distortion and to set men against one another is ruled out." ⁶ When speaking of the negotiators at the stage of the constitutional convention, he says that "[p]rovided they have no information about particular individuals including themselves, the idea of the original position is not affected." ⁷ As we have seen, hypothetical particulars meet these requirements. Consequently, there is no reason to exclude them from the range of information possessed by the negotiators in the original position.

A discussion of particular and general facts, as well as theories, need not only refer to individuals, but can also be extended to societies. Consider the following:

- (1) South Africa is a heterogeneous society.
- (2) There is a heterogeneous society.
- (3) Some societies are heterogeneous.
- (4) Many societies are heterogeneous.
- (5) All societies are heterogeneous.

Information distinguishing one society from another is inadmissible in the original position to prevent negotiators favouring particular societies. (1) is therefore ruled out, since it refers to a specific society. (3), (4) and (5) are general social theories in one form or another that constitute the bulk of the negotiator's knowledge. Unlike (1), (2) does not identify any one society. It only refers to a type of society. However, the negotiator

has little reason to favour heterogeneous societies to the detriment of others, for he knows nothing about his society. Therefore the negotiator is quite entitled to make use of the information conveyed by (2), an hypothetical particular.

We can now turn our attention to some of the criticisms levelled against the limits on knowledge. Schaeffer has argued that knowledge of particular facts, and general facts and theories, go hand in hand. Furthermore, particular facts should be made available in the original position, since they form an essential part of the understanding of general theories. As Schaeffer puts it:

Can humans possess any general knowledge without having or at least developed this knowledge from the study of particulars (a study in which the participants in the original position are prevented from engaging)? One cannot, for instance, have learned any laws of human psychology while remaining entirely ignorant of one's own psychology. But how, having derived one's knowledge from the awareness of particulars, can one forget the latter in order to simulate the deliberations of the original position? ⁸

In the majority of cases, general theories are based on the study of particular facts. Most general theories are explanatory (in addition, some are predictive) and the explanations are directly related to the classification, or grouping, of particular facts. Let us consider an example. The statement, 'he is hungry', is a particular fact. On the basis of observing several other instances of similar facts ('a' is hungry, 'b' is hungry, and so on), we both simplify and classify these occurrences by way of the general statement, 'some people are hungry'. The

general statement embraces all particular facts of the same kind that have occurred, are present, and will take place in the future.

Schaeffer, in his psychology example above, suggests knowledge of general theories to be directly related to an individual's knowledge; that is, an understanding of the general statement, 'some people are hungry', depends, in part, on the observation, 'I am hungry' (or 'I have been hungry'). The ability to apply a theory to one's own particular case can help one to understand it, but such applications are not an indispensable part of comprehending general facts and theories. It is even very difficult to apply some theories in this way. Some may be entirely foreign to an individual's experience. The capacity to understand principles of economic theory, mathematical theorems, or the kinship pattern of a foreign tribe, is not hindered by, and does not depend on, an individual's personal experience. Therefore there is no reason why the negotiators will not be able to understand general facts and theories, even though they cannot use personalized particulars.

Those in the original position must be able to assess the consequences of choosing various principles of justice and to rank principles in order of preference. The general theories have to be applied to hypothetical situations so that the possible outcome of implementing any theory can be evaluated. Certain particular facts have to be available in the original position if any such compa-

risons and assessments are to be made at all. For instance, negotiators can compare the principle of utility with a maximin principle by analyzing specific cases in which both theories can be applied (for example, homogeneous or heterogeneous societies, industrialized and agricultural nations, and so on). By employing hypothetical particulars, the negotiators are able to make effective use of the available general information. These particulars provide the link between the theoretical development and the evaluation of principles of justice. Without hypothetical particulars, those in the original position would have little basis for preferring one conception of justice to another. The knowledge of hypothetical particulars behind the veil of ignorance undermines Schaeffer's claim that " . . . it is even doubtful that 'general' and 'particular' knowledge are at all separable in the manner Rawls assumes, so that any knowledge would remain once the particulars had been subtracted." ⁹ Quite the contrary is true. In theory, at least, any conception of justice and set of principles can be adequately discussed and tested in possible situations on the basis of general laws and theories together with the class of hypothetical particulars.

Another major criticism of the veil of ignorance is that the original position is unjust since the negotiators are denied knowledge of their particular plans of life. Consequently, the principles of justice are chosen in an initial situation that is unfair.

One has to bear in mind that the negotiators have

to choose principles to determine the arrangement of the basic structure of a society. Although a negotiator will select principles to best advance his own interests, he realizes they will affect all members of his society. Consequently, the divergent interests of individuals have to be taken into account. There is nothing to prevent the many different possible plans of life from being discussed in the original position. By making use of accessible hypothetical particulars, the negotiators can evaluate any goal in life which might be held by one member of a society, or by many members of numerous societies. Therefore, it is incorrect to say that some plans of life are ruled out by the way the original position has been devised. All plans are available for discussion. The negotiator can ruminate over any end in life whilst, at the same time, remembering to advance his own index of primary goods as much as possible.

Nagel asks, "Why should parties in the original position be prepared to commit themselves to principles that may frustrate or contravene their deepest convictions, just because they are deprived of the knowledge of these convictions?" ¹⁰ Bloom writes in a similar vein:

Only the 'veil of ignorance' and the 'original position' makes consensus possible: but once the scales fall from a man's eyes he may well find that his life plan does not accord with liberal democracy. Rawls asks that only those life plans that can co-exist be accepted, but he is not sufficiently aware of how far this demand goes and how many plans must be rejected on this ground . . . ¹¹

We have already seen how a wide and full discussion of all plans of life, as well as all possible social arrangements of societies, is consistent with the requirements of the veil of ignorance.

If, after lifting the veil, individuals discover their ends in life to be incompatible with the chosen principles of justice, they cannot complain about the unjustness of the original position. They have to accept that their particular plans of life were considered by the negotiators to be unsuitable bases of principles of justice. To suggest, as Bloom does, that many plans will be rejected in this way, is only to admit that, in actual circumstances, individuals often fall short of the social ideals to which they aspire. After all, Rawls' theory of justice attempts to determine the most appropriate basic institutional framework of a society. There is no reason to reject a standard merely because some individuals or societies cannot adhere to its requirements. Any theory, whether in the natural or social sciences, will encounter particular anomalies for which it cannot account. These anomalies will only become significant when they are so serious or numerous that the theory has to be revised, or even discarded altogether. Similarly, any theory of justice cannot accommodate each and every plan of life. One cannot criticize Rawls' theory because it does not correlate with the aspirations of every individual. Instead, " . . . an important test of a theory of justice is how well it introduces order and system into our considered judge-

ments over a wide range of questions." 12

Motivational Assumptions.

In the previous chapter, I mentioned that Rawls makes five assumptions about the negotiators. All of these will now be examined in more detail. According to Rawls, the assumptions are plausible because they constitute reasonable and widely shared premises. Our task is to consider the validity of this view.

(a) The negotiators are aware of the fact that the circumstances of justice prevail in their society. There are two sets of circumstances; objective and subjective. Objective circumstances fall into two categories of resources; human and natural. Human resources refer to man's limitations. Each individual cannot always do what he wants, for he is either incapable of carrying out his plans alone, or else they can be frustrated by other persons. Examples of natural resources are land, water, minerals, and so on. No individual in any society has an abundant supply of all these. It would seem that some measure of co-operation between persons in the distribution of both human and natural resources is both desirable and necessary. 'Moderate scarcity' obtains when such a distribution is necessary and possible: "Natural and other resources are not so abundant that schemes of co-operation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down." 13

The subjective circumstances refer to differences

between individuals. Not all persons have identical powers of attention, reasoning, memory and judgement. All do not share the same knowledge or ability. Individuals, therefore, have different interests and goals in life. Some plans of life will be incompatible with others, and any society is characterized by both an identity and a conflict of interests between its members: this seems to be an almost inevitable part of the human condition.

The subjective and objective circumstances of justice are background conditions which are characteristic of all human societies. These circumstances reflect a need for principles of justice. A negotiator knows it makes sense to speak of choosing principles for the basic structure of his society, because the necessity for such principles exist. There is nothing controversial about this assumption, for, according to Rawls " . . . a human society is characterized by the circumstances of justice. The account of these conditions involves no particular theory of human motivation. Rather, its aim is to include in the description of the original position the relations of individuals to one another which set the stage for questions of justice." ¹⁴

(b) Negotiators are not isolated individuals in the original position. They are continuing strands. This assumption deals with the link between a negotiator and his descendants. Those in the original position on any occasion realize they are contemporaries. The number of generations that can be represented in the original position at the same time is limited by the life expectancy of human

beings. This physiological fact can be expected to be part of a negotiator's general information. Since all negotiators are equally affected by principles of justice, there is nothing to prevent them from favouring the set of generations they represent. They could evoke the principle that no-one has a duty to posterity. The possibility of saving for future generations would not arise. Furthermore, this principle would be chosen irrespective of whether previous generations saved or not. Rawls attempts to solve this problem by introducing a motivational assumption to deal with the question of justice between generations.

Although the negotiators are mutually disinterested individuals, they are concerned to further the welfare of their nearest descendants. Their goodwill extends over at least two generations. Each person in the original position cares about the welfare of someone in the succeeding generation; every member of the succeeding generation is the subject of concern of someone in the present generation. This assumption is the only way of ensuring the maintenance of justice between generations. I shall discuss some difficulties with this view in Chapter Five.

Apart from limited ties to succeeding generations, a negotiator strives to advance his index of primary goods. He takes no account of any possible allegiance to groups or sectional interests in his society. If groups are ignored in the original position, is Rawls assuming that homogeneity or heterogeneity of societies is irrelevant for the choice of principles of justice?

Groups, in this context, are distinguished on the basis of either relatively permanent qualities (for example, race or language) or fundamental beliefs and attitudes (for example, religion and nationalism). These groups can have status and rights at a level which is somewhere between the individual and the state. Vernon Van Dyke explains this as follows:

In practice many such groups demand what they regard as justice for themselves as collective entities; that is, they demand legal status and rights as collective entities. And when they get it, as they not uncommonly do, questions of justice for individuals get intertwined with questions of justice for groups, for differentiations occur among individuals depending on the group to which they belong. My contention is that to be satisfactory a theory of justice must concern itself with groups as well as individuals, and thus that groups as such must somehow be represented in the original situation.¹⁵

Rawls is well aware of the existence of plural societies. He makes very little reference to them because their composition is irrelevant for the selection of principles of justice. All in the original position are treated equally as moral persons, and the introduction of group membership would destroy the rationale for the veil of ignorance. Members of particular groups would try to protect the interests of their group at the expense of others. Consequently, no conception of justice would be acceptable to everyone in a society. Furthermore, discrimination of this sort is likely to create envy and resentment, not diminish it, and so the negotiators could no longer assume the absence of envy. Behind Rawls' veil of ignorance, a negotiator is unaware of the nature of the

groups in his society. Nor does he know to which group he belongs. As a result, group affiliations play no part in the formulation of principles for the basic structure. However, any consideration of groups is not ruled out entirely in Rawls' theory. At both the constitutional convention and legislative assembly relevant facts about societies are revealed. Questions about group interests and allegiances are more appropriately dealt with at these stages.

(c) The negotiators are assumed to be capable of a sense of justice. First of all, a negotiator is presumed to have the ability, opportunity and desire to compare conceptions of justice and formulate principles. Without these capabilities, it is pointless to speak of a choice of principles at all. Of course, negotiators can still make wrong decisions. But Rawls seeks to minimize this possibility by removing all arbitrary factors through the device of the veil of ignorance. Secondly, negotiators can depend on themselves and others to abide by the principles eventually chosen; that is, strict compliance is assumed. So those in the original position must be sure to select principles they can adhere to with no, or little difficulty. In other words, they consider, what Rawls calls, the 'strains of commitment'.

Two difficulties can be raised about the strict compliance condition. Although the negotiators assume this condition, is it also not general knowledge among them that some persons in society do not ordinarily honour their promises? Either they do not always mean what they say,

or they do not carry out these promises. If this is part of our general knowledge, should the negotiators take this into consideration when choosing principles of justice? It is easier to begin with the second question. In terms of an example, this question reads: 'as we know some people will not obey traffic regulations, should we not take account of this when formulating a road code?'. How do we then draw up a code at all? We would have to consider that some people obey traffic regulations, whilst others disobey. Furthermore, they can disobey in many different ways. A similar situation would occur with the breaking of promises and the selection of principles. The strict compliance condition does away with this sort of problem. If the negotiators took some or all possibilities (and which one would we choose?) into consideration, the task of choosing principles would be totally impossible.

The answer to the first question is implicit in the reply to the second. Some people do not generally honour their promises. But it is equally true that others do. Both facts would be available to the negotiators. If no-one kept his word, strict compliance could not be assumed in the original position. This is not characteristic of human behaviour and can be ignored here. Is it reasonable to assume strict compliance if people both keep and break promises? Strict compliance is a formal condition. If it was not assumed, an element of injustice would be introduced to the formulation of principles, for it would favour those who habitually break their promises. Consequently,

it is more reasonable to assume strict compliance in the original position, as it accords with the expectations of those who keep their promises. Once the veil of ignorance is lifted, some persons may decide not to adhere to the principles. They will then be punished in terms of impure procedural justice. We must be careful to distinguish between the formal conditions of the original position, and the actions of negotiators after the veil of ignorance is removed.

(d) A negotiator is assumed not to envy others who turn out to have a higher index of primary goods than himself. We must see if this is a valid assumption. Furthermore, we have to decide whether it is compatible with the general information that some men are envious and others are not. (The negotiators know both these general facts.) According to Rawls, envy is " . . . the propensity to view with hostility the greater good of others even though their being more fortunate than we are does not detract from our advantages." ¹⁶ We envy those whose index of primary goods is higher than ours, and we wish to diminish their advantages, even if this involves a loss for us. Moreover, others become aware of our envy and take care to protect their greater benefits. Envy, understood in this way, is disadvantageous for everyone, since it breeds discontent and conflict in societies. If this sort of envy is to be avoided, it must form no part of the original position. This ensures that envy is denied a role in the choice of principles of justice.

As was mentioned earlier, the 'no envy' assumption is subject to certain limitations. A negotiator does not envy others who have a higher index of primary goods, provided the difference between himself and others does not exceed certain limits. Moreover, such inequalities must not be based on injustice. These limits are specified by the difference principle and the principle of fair equality of opportunity. I shall discuss them in Chapter Four.

The assumption about envy is introduced in the account of the original position for tactical reasons and does not presuppose a certain moral psychology. Rawls says as much: "Therefore, for reasons both of simplicity and moral theory, I have assumed an absence of envy . . . " ¹⁷ (My emphasis). The negotiators are oblivious of all their special psychological propensities, including envy. They are aware that some people are envious and others are not: in order to benefit the latter the absence of envy is assumed in the original position.

(e) Finally, Rawls assumes that the negotiators, who are mutually disinterested, will try to advance their index of primary goods as much as possible. But what happens if a negotiator does not want many primary goods? Why should he try to attain more than he desires? There are two answers to this. First, a negotiator in the original position knows nothing about the details of his plan of life. So he is unaware of how many primary goods he will actually wish to have once the veil of ignorance

is removed. Consequently, his best bet is to strive for the highest possible index of primary goods. This will enhance the negotiator's chances of fulfilling his plan of life in society. If the negotiator does not need his whole share of goods, he can dispose of them. Secondly, " . . . in circumstances of justice moderate scarcity obtains, so that by hypothesis not all that is claimed can be granted." ¹⁸ Some primary goods will be in abundance in society, and others in short supply, or not available at all. A negotiator neither knows which primary goods are at his disposal, nor how many of these he requires to advance his plan of life. It is therefore rational for a negotiator to take account of all possibilities by aiming for the highest index of primary goods.

A common criticism of Rawls' negotiators is that they are self-interested, or even selfish, individuals with individualistic aims. Brian Barry is one who expresses this view:

A man's 'conception of the good' may include in it the welfare of certain other people for whom he feels affection or special responsibility. But, for the purpose of the original position, it does not include a substantive sense of justice. That is to say, a man cannot, in the original position, take as his end the idea that everyone's welfare should be increased as much as possible, or say that he would like a certain distribution of goods or utilities for its own sake.¹⁹

We have already seen that there is nothing to prevent the negotiators from discussing any plan of life in the original position, including Barry's examples. A negotiator might hypothesize that a certain distribution of goods might be

desired for its own sake. However, this suggestion would be of no use to those trying to formulate regulatory principles which specify the arrangement of the major institutions of society as well as the rights and duties of its members.

To tentatively suggest the principle that everyone's welfare should be increased as much as possible is perfectly reasonable. Presumably, 'everyone', in this case, also refers to the negotiator formulating the principle. By increasing everyone's welfare, he increases his own, thereby advancing his index of primary goods. It appears, then, there is no reason to suggest either that the negotiators are self-interested or that the choice of principles in the original position has to be individualistic in form. The negotiators can choose non-individualistic principles if they are best suited to advance their indices of primary goods. We cannot say that, because individualistic principles of justice are selected in the original position, the reasons for their choice lie in the interpretation of the original position. Many possible principles can be formulated behind the veil of ignorance and we need to examine the content of the two principles to understand why they are favoured by the negotiators. Rawls' original position is only individualistic in the trivial sense that the principles are chosen by individuals. The negotiators are not to be compared to " . . . self-centered economic competitors or seekers after power . . . [A] far more helpful case is the relation between members of different

religions; for while they are mutually disinterested under circumstances of justice, they are neither self-interested nor necessarily engaged in the pursuit of individualistic plans of life." ²⁰

Final Problems.

I have argued that both the limits on knowledge and the assumptions made about the negotiators do not introduce unfairness or bias to Rawls' interpretation of the original position. (See Appendix for a comparison between this position and other societies.) We must now consider two final problems.

First, is the original position a device merely used to justify the choice of the two principles of justice? In A Theory of Justice, we find the following: " . . . the original position has been defined so that it is a situation in which the maximin rule applies." ²¹ And, "[w]e want to define the original position so that we get the desired solution." ²² The maximin rule does indeed apply to the original position, but it need not be the only rule to apply, for any conception of justice can be considered. Negotiators might select principles by evoking some maximin or minimum rule to specify a person's share of primary goods. So the first of the above quotations presents no problem. The second one, often used by critics, is extremely misleading when taken out of context. The passage reads: "Now the reasons for the veil of ignorance go beyond mere simplicity. We want to define the original position so

that we get the desired solution. If a knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies." ²³ The desired solution is that all those in the original position should be treated equally as moral persons: as we observed in the first section of this chapter, there is very little wrong with this view. Consequently, the original position has not been defined so that the choice of the principles of liberty and fair equality of opportunity together with the difference principle is inevitable.

The second problem is related to Rawls' use of such concepts as liberty, democracy, self-respect, and so on. Robert Paul Wolff has commented in another context: "It is shrewd of the philosophers of liberalism to insist that their world of private values is the only probable world." ²⁴ Is there an emphasis on these concepts because the original position embodies the assumptions of classical democracy? The following account is based on Ronald Dworkin's article, "The Original Position". ²⁵

According to Dworkin, Rawls' social contract " . . . must be seen as a kind of halfway point in a larger argument, as itself the product of a deeper political theory that argues for the two principles through rather than from the contract." ²⁶ Once we identify the features of such a 'deep' theory, the reasons for using the heuristic device of a contract become apparent.

In Chapter One, I stated that contract theories are non-teleological; 'right' is prior to 'good'. One

would therefore expect principles of good to be subordinate to principles of right in Rawls' deep theory. Dworkin confirms this: "The original position is well designed to enforce the abstract right to equal concern and respect which must be understood to be the fundamental concept of Rawls' deep theory."²⁷ For Rawls, the right to equal respect is restricted to human beings. (Peter Singer, in his recent and very interesting book, Animal Liberation, has argued that this right should also be extended to animals.)²⁸ Rawls' original position is worked out on the basis that all persons have an interest in determining the arrangement of the major social institutions of their society. This interest is only effective if all are given the equal right to concern and respect in the original position, " . . . a right they possess not by virtue of birth or characteristic or merit or excellence but simply as human beings with the capacity to make plans and give justice."²⁹ Rawls' most basic concern, embodied in the original position, is with the right to concern and respect, and not with particular conceptions of liberty and democracy. Liberty and democracy play no part in the formulation of the original position. Dworkin comments: "Rawls' most basic assumption is not that men have a right to certain liberties that Locke and Mill thought important, but that they have a right to equal respect and concern in the design of political institutions."³⁰

A final thought: it might be possible to argue that even the right to equal concern and respect assumes the pre-eminence of morals and behaviour based on the traditions

of European thought and experience. We have to take this into account. But we also have to be careful that relativism in social and political theory does not lapse into nihilism. Any social theory has to have a starting point in which something is taken for granted. Perhaps a theorist should aim to assume as little as possible, and to justify whatever is assumed. As we have seen, Rawls has not failed to do this. Having analysed, and accepted, Rawls' interpretation of the original position, our next task is to discuss the two principles of justice chosen by the negotiators.

NOTES

1. Rawls, A Theory of Justice, p. 200.
2. David A. Richards, A Theory of Reasons for Action (Oxford: Clarendon Press, 1971), p. 83.
3. Rawls, A Theory of Justice, pp. 137-138.
4. Ibid.
5. Ibid., p. 12.
6. Ibid., p. 200.
7. Ibid., p. 198.
8. D. L. Schaeffer, "A Critique of Rawls' Contract Doctrine," Review of Metaphysics, 28 (September, 1974), pp. 94-95.
9. Ibid., p. 95.
10. Thomas Nagel, "Rawls on Justice," in Reading Rawls, ed. by Norman Daniels (Blackwell, 1975), p. 10.

NOTES (Cont'd)

11. Allan Bloom, "Justice: John Rawls Vs. The Tradition of Political Philosophy," American Political Science Review, LXIX (June, 1975), p. 653.
12. Rawls, A Theory of Justice, p. ix.
13. Ibid., p. 127.
14. Ibid., p. 129-130.
15. Vernon Van Dyke, "Justice as Fairness; for Groups?," American Political Science Review, LXIX, (June, 1975), p. 607.
16. Rawls, A Theory of Justice, p. 532.
17. Ibid., p. 530.
18. John Rawls, "Fairness to Goodness," Philosophical Review, 84 (October, 1975), p. 543.
19. Barry, The Liberal Theory of Justice, p. 11.
20. Rawls, "Fairness to Goodness," pp. 542-543.
21. Rawls, A Theory of Justice, p. 155.
22. Ibid., p. 141.
23. Ibid.
24. Robert Paul Wolff, The Poverty of Liberalism (Boston: Beacon Press, 1968), p. 194.
25. Ronald Dworkin, "The Original Position," in Reading Rawls, ed. by Norman Daniels (Blackwell, 1975), p. 16-52.
26. Ibid., p. 37.
27. Ibid., p. 50-51.
28. Peter Singer, Animal Liberation (London: Jonathon Cape, 1976), especially Chapter One.
29. Dworkin, "The Original Position," p. 51.
30. Ibid., p. 52.

CHAPTER THREE

THE PRIORITY OF THE PRINCIPLE OF LIBERTY

There are three different arguments as to why the negotiators prefer to protect their civil and political liberties before determining the distribution of social and economic primary goods. First, the most important primary good of self-respect is best secured by the priority of liberty. The second argument is based on the reasons advanced for liberty of conscience. Finally, a society's change in circumstances, from unfavourable to favourable, satisfies the conditions for the lexical ordering of the principles of justice. But before discussing these arguments, we need to look at Rawls' conception of liberty.

Liberty.

As the negotiators have to select principles of justice to determine the arrangement of the basic structure of society, liberty, in the first instance, refers to institutions and not to individuals.* Consequently, "[w]hether men are free is determined by the rights and duties established by the major institutions of society. Liberty is a certain pattern of social forms." ¹ The fundamental liberties,

*We are, therefore, not concerned with special cases where an individual 'is free' but does not 'feel free', or vice versa. In any case, a negotiator has no knowledge of his own psychological propensities, although he is aware of the interplay between psychological factors and various forms of liberty.

protected by the first principle of justice " . . . are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law." ²

(My emphasis.) Liberty is represented by this system of basic liberties. Other "[1] iberties not on the list, for example, the right to own property and freedom of contract as understood in the doctrine of laissez-faire are not basic: they are not protected by the priority of the first principle." ³ Libertarians, in particular, have strongly

objected to the exclusion of these so-called economic liberties. Perhaps the most persuasive account thus far has come from Rawls' Harvard colleague, Robert Nozick. ⁴

Third World countries, as well as the Eastern bloc, often regard food, shelter, health-care and education as being of equal or more importance than the liberties included in the first principle. However, a negotiator, whose society is in favourable circumstances, assumes that such needs have already been, or can be, fulfilled. Further important forms of liberty, for instance, sexual freedom and the liberty to use drugs or alcohol, are also not among those embodied in the principle of liberty.

Rawls' basic liberties refer to both, of what have sometimes been called, the 'negative' and 'positive' aspects of freedom, characterized as 'freedom from . . . (constraints)'

and 'freedom to . . . (do, or omit, or be, or have)'. The debate about whether freedom should be defined in terms of either negative or positive elements has been deliberately ignored by Rawls, since " . . . for the most part this debate is not concerned with definitions at all, but rather with the relative values of the several liberties when they come into conflict." ⁵ The significance of the various liberties is not merely a matter of definition, but a question of substantive political philosophy that can only be answered by a theory of justice as part of a theory of right.

Rawls uses a triadic form of liberty: " . . . this or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so." ⁶ Reference is made to three items: the subject of the ascribed freedom; the compulsion or constraint; the action or omission actually or hypothetically desired by the subject. The subject or agent may be a person, an association or a state. Constraints can take many forms. A person's actions have been constrained whether they have been influenced by public opinion, or by prohibitions defined by law. Rawls is mainly concerned with constitutional and legal restrictions because " . . . the rights and liberties referred to by these principles are those which are defined by the public rules of the basic structure." ⁷ An individual's inability to take advantage of his liberties as a result of poverty or a lack of education, or whatever, can also be regarded as a constraint. According to Rawls, such inabilities are not to be counted as

constraints definitive of liberty; instead, they affect a person's worth of liberty. (Norman Daniels objects to this line of reasoning, but I shall leave his argument until I discuss the worth of liberty in the last section of this chapter.)

The triadic form of liberty connects the negative and positive aspects of freedom. Joel Feinberg comments that " . . . if nothing prevents me from doing X, I am free to do X; conversely, if I am free to do X, then nothing prevents me from doing X. 'Freedom to' and 'freedom from' are in this way logically linked, and there can be no special 'positive' freedom to which is not also a freedom from." ⁸ Elsewhere, Feinberg states that, in cases where all three elements of the triadic form of liberty are present, 'freedom from' and 'freedom to' are two sides of the same coin, not two radically different types of freedom. ⁹ This view represents Rawls' own position, as the following example illustrates:

If, . . ., we consider liberty of conscience as defined by law, then individuals have this liberty when they are free to pursue their moral, philosophical, or religious interests without legal restrictions requiring them to engage or not to engage in any particular form of religious or other practice, and when other men have a legal duty not to interfere. ¹⁰

Self-Respect and the Priority of Liberty.

We can now turn our attention to the first of the three arguments for the priority of liberty. As self-respect is the most important primary good, the negotiators' foremost task is to secure it. Self-respect is

crucial, because

[w]ithout it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism. Therefore the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect. 11

This account does exaggerate the effects of a loss of self-respect in an attempt to show how essential it is. Although Rawls goes into detail about the meaning of self-respect, nowhere in A Theory of Justice does one find a substantial argument for its pre-eminence. Nevertheless, in my account, I shall assume that self-respect is the principal primary good. According to the first line of reasoning, the negotiators can obtain their self-respect by first selecting the principle of liberty. Before we can discuss this approach, we have to examine what Rawls means by self-respect or self-esteem.

There are two sides to self-respect. First of all, self-respect is based on a person's sense of his own worth. This assessment depends on how an individual values his plan of life. One's self-respect is obtained by the feeling that one's plan of life is worth carrying out. Two distinct aspects are apparent in the first element of self-respect; having an actual plan of life, and its evaluation. In the second place, a person's self-respect is secure if he has confidence in his ability to fulfil his plan of life: a lack of confidence or a history of failure removes the basis of self-esteem.

We now need to consider both aspects of an individ-

ual's sense of his own worth. First, a person values a rational plan of life which satisfies the Aristotelian principle. This principle states that, " . . . other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities) [for carrying out their plans of life], and this enjoyment increases the more the capacity is realized or the greater its complexity." ¹² Individuals find that as they become more expert at doing something their enjoyment of it increases. Furthermore, if a person can do two things equally well, he will prefer to do the one which requires greater skill, ability, or effort. To use Rawls' example, chess is a more complicated game than checkers: a person who can play both equally well will generally choose to play chess, for activities failing to satisfy the Aristotelian principle (in this case, checkers) reduce an individual's sense of his own worth. The Aristotelian principle is a principle of motivation, since, according to Rawls, it explains many of our desires, particularly why we favour certain activities and not others.

The second aspect of a person's sense of his own worth, is the companion effect of the Aristotelian principle: a person only gains self-esteem when others approve of his plan of life. Individuals differ in ability and an appropriate plan of life for one need not be suited to all. But in any society there are a variety of communities and associations where the members of each have similar abilities and skills. The members of one community or association share plans of life with roughly the same interests and

degree of complexity. A person's sense of his own worth depends on how others in his community respect his plan of life. Reassurance about one's own end removes self-doubt and diminishes the prospect of failure.

It appears that a negotiator relies largely on other persons, rather than himself, to provide the basis of his self-respect. Allan Bloom comments: "The sense of one's own worth, he [that is, Rawls] reiterates time and time again, depends very much on the esteem of others. . . . ; Rawls's man is in every way dependent, 'other directed'." ¹³ Rawls' view is similar to Bloom's, differing only in emphasis, for he says that " . . . our self-respect normally depends upon the respect of others." ¹⁴ (My emphasis.) Possibly we do obtain self-respect in this way (and this is debatable), but it is a different question whether a negotiator, who is pursuing his own best interests behind the veil of ignorance, should secure it on this basis. Nevertheless, as I shall argue a little further on, even if one's self-respect is dependent on others, Rawls is not yet out of the woods.

According to the first argument, liberty provides the best social basis for self-respect. Rawls considers only two alternatives; whether self-respect should be secured by liberty or socio-economic status. Let us consider the case for the latter; that is, how one is valued by others is determined by one's socio-economic status. In this instance, status is worked out on the basis of income, wealth, and material means and resources in general. To have a higher

socio-economic status than others means possessing more valuable material means and resources. Not everyone can have the highest status. Consequently, an improvement of one's own position lowers someone else's. In other words, this is a zero-sum game for self-respect. The situation is akin to the seedings in a squash racquets club. If I improve my ranking on the squash ladder, at least one other player's fortune declines as mine progresses. Very little co-operation can be expected if individuals obtain respect in this way, for they would continually compete with each other to acquire greater self-esteem by accumulating as many material resources as possible. It would be irrational for a negotiator to allow his self-respect to be determined by socio-economic status, since any information about his status is excluded from the original position. Upon removing the veil of ignorance, a negotiator might find he has relatively little socio-economic status and therefore almost no self-esteem at all. Furthermore, he has to safeguard his future. Acknowledging self-respect on socio-economic grounds might turn out to be advantageous to a particular negotiator. But disastrous losses of wealth, and a corresponding decline in self-respect, can occur in the future. Admittedly the situation might be very different. A negotiator's fortunes might improve, but this is still too risky a basis for obtaining self-esteem.

Everyone's self-respect could be equal if all had the same amount of material means and resources. But the negotiators reject this possibility, since limited inequal-

ities of wealth are beneficial to the least advantaged representative man. If self-respect is secured by either liberty or socio-economic status, then the argument against socio-economic status (whether it is distributed equally or unequally), by elimination, establishes the claim of liberty. As Henry Shue comments: "The inference to the priority of liberty is also an inference to the subordination of wealth and its equality." ¹⁵

The discussion of socio-economic status and self-respect reveals that a negotiator is not prepared to accept an unequal share of the principal primary good. If everyone is to have the same amount of self-respect, and if self-respect is best secured by liberty, it follows that liberty has to be shared equally by all. The first principle of justice chosen by the negotiators satisfies this requirement: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." ¹⁶ The principle of liberty is lexically prior to the principle of fair equality of opportunity and the difference principle, because public affirmation of equal liberties for all provides the most secure social basis for self-respect.

Rawls' argument rests on the premise that an equality of some primary good will produce an equality of self-esteem. His main problem, as we have seen, is to decide which primary good should be made equal. But the premise itself needs to be examined more closely. The emphasis on equalizing a primary good is directly related to Rawls' interpretation

of self-esteem. We saw that, according to the companion effect of the Aristotelian principle, a person's sense of his own worth depends on the opinion of others who have similar plans of life. One has the same self-respect as other persons when one is accepted as an equal by them. The basis of equality varies. For instance, the self-esteem of a tennis player is determined by whether or not the community of tennis players regards him as an equal. Contrary to Rawls' view, Nozick argues that self-respect is not based on criteria that equate persons, but on criteria that differentiate them. A person evaluates his worth by comparing what he can do to others. For example,

[a] man living in an isolated mountain village can sink 15 jump shots with a basketball out of 150 tries. Everyone else in the village can only sink 1 jump shot out of 150 tries. He thinks (as do the others) that he's very good at it. One day, along comes Jerry West. ¹⁷

His self-respect in his own eyes, and in the estimation of others, has been reduced, because Jerry West, a professional basketball player, can probably sink at least 100 jump shots out of 150 attempts. One's self-esteem is relative to what one can do. From Rawls' perspective, a person who can sink 15 jump shots will secure self-respect by being accepted by others who obtain the same score. According to Nozick, a person who sinks 15 jump shots will gain self-respect by comparing his effort to inferior ones. To quote Nozick again:

Persons generally judge themselves by how they fall along the most important dimensions in which they differ from others. People do not gain self-esteem from their human capacities by comparing

themselves to animals who lack them. ('I'm pretty good; I have an opposable thumb and can speak some language.') . . . When everyone, or almost everyone, has some thing or attribute, it does not function as a basis for self-esteem. Self-esteem is based on differentiating characteristics; that's why it's self-esteem.¹⁸

Self-respect is based on criteria that differentiate; if these criteria are equalized it will need to be based on something else. Once the negotiators have chosen the principle of liberty so that all have equal basic liberties, this principle can no longer function as the basis of self-respect. The negotiators will take their liberties for granted, and self-respect will be determined by the unequally distributed primary goods. As we saw earlier, Rawls considers only two possible bases of self-respect; liberty and socio-economic status. Having equalized their liberties, the negotiators' self-respect will now be dependent on their socio-economic status, (even though they are unaware of what their status is in the original position). This criterion can never be equalized, since the difference principle allows an unequal distribution of social and economic primary goods. Consequently, after choosing the principles of justice, a person, who is no longer in the original position, will always calculate his own worth by comparing his socio-economic status to the status of others. This is precisely the conclusion Rawls hoped to avoid.

Whether or not one agrees with Rawls' first argument for the priority of the principle of liberty turns on a few key problems. First, can self-respect only be acquired on the basis of either liberty or socio-economic status?

Secondly, does a person's sense of his own worth depend on himself or others? Finally, if self-respect is 'other-dependent', is it based on criteria that equalize, or criteria that differentiate? These are questions of moral psychology. If Rawls' answers to these questions are correct, the principle of liberty is prior to both the principle of fair equality of opportunity and the difference principle because it enables a negotiator to obtain an equal share of self-respect. But if Rawls' argument is derived from dubious premises — and I have indicated that there is evidence for this view — a conclusive argument for the priority of the principle of liberty will have to be established in some other way.

Liberty of Conscience.

Rawls uses the example of liberty of conscience to show that the negotiators will try to protect their civil and political rights before deciding on the distribution of social and economic benefits. This is the second argument for the priority of the principle of liberty. In this particular case, the negotiators have to formulate a principle to regulate their fundamental moral, philosophical and religious beliefs. Three different aspects have to be taken into account before agreement can be reached on the extent of the principle.

First of all, the negotiators, behind the veil of ignorance, are unaware of their moral, religious and philosophical beliefs. Nor do they know how seriously they regard

them. Furthermore, a negotiator cannot tell which views constitute the majority opinion of his society. In a position of ignorance and uncertainty, a negotiator will play his hand cautiously. He has to advance his index of primary goods as much as possible while avoiding unnecessary risks. This can best be achieved by following the maximin principle. The negotiator cannot afford to gamble with his beliefs, particularly if he turns out to take them seriously. If he permits tolerance of all views, he is sure to have included his own. Tolerance cannot be extended to some beliefs at the expense of others, if a negotiator is to avoid possible persecution in the future. Consequently, all risks of suppression can be avoided, and tolerance of all beliefs guaranteed, if the principle of equal liberty of conscience for all is chosen.

Norman Daniels has suggested " . . . that some religious views tend to impose and emphasize divisions and barriers among people with a generally harmful effect. If people in the original position know of these effects, why would they want to risk being exposed to them?" ¹⁹ Rawls would probably answer that the negotiators are well aware of these problems, but they cannot arbitrarily dismiss some beliefs ab initio in favour of others, especially as they are formulating principles of justice for the basic structure of society. The beliefs of some cannot be restricted for the greater freedom of others. There is no question of evaluating various views by the principle of utility. It would be unfair to those who discover that their beliefs

are proscribed. The negotiators stipulate the limits of tolerance. If some persons exceed these limits, thereby contravening strict compliance theory, they must pay the appropriate penalty.

Intolerant persons fall into one of two broad categories. In the first place, there is the optimistic view. If those, who are intolerant of others, find their beliefs tolerated by society, they might in the long run come to believe in tolerance themselves. This is based " . . . on the psychological principle that those whose liberties are protected by and who benefit from a just constitution will, other things equal, acquire an allegiance to it over a period of time." ²⁰ It is difficult to say how many of the intolerant will be 'converted' in this way. A lot depends on the form of intolerance. There is a large gap between being intolerant of a person's religious beliefs and being intolerant of a political system to the extent of conducting urban terrorism. Benjamin Barber questions Rawls' optimism about the highly intolerant:

The sort of data deployed by those who are interested in evidence indicate that the intolerant are largely beyond rationality and thus quite incapable of grasping what is at stake in the very idea of toleration. The intolerant defer to imagined superiors with the same irrationality that they bully imagined inferiors. Fanatical true believers often seem to regard toleration by others as a compliment to their own rightness rather than as a reprimand to their intolerance. ²¹

Those who Barber has in mind probably belong to the second category of the intolerant. The intolerant cannot complain if they are not tolerated by the remainder of

society. But their freedom can only be restricted when the tolerant members of society have good reason to believe that their safety and the security of the institutions of liberty are threatened. Rawls emphasizes that the freedom of some is never restricted for a greater liberty for others. There is no appeal to utilitarian considerations. The liberty of the intolerant is only curbed to preserve a just institution.

Each negotiator in the original position is presumed to advance and protect the interests of at least one other member of a succeeding generation. This is the second aspect to be taken into account when deciding on the extent of liberty of conscience. If the negotiators discriminated against certain moral or religious beliefs, certain persons in succeeding generations would be forced to accept less than equal liberty. A following generation can only object to such a principle if, once they have reached the stage of political maturity*, they would choose a different conception of liberty of conscience for themselves and their descendants. Care must be taken to avoid a conflict of interests between generations. The negotiators' descendants will want their liberties to be protected as much as possible. This can only be achieved by consenting to equal liberty of conscience. Anything less than the extent of this liberty increases the risk of disputes between generations.

The third aspect is that the negotiators' agreement on the principles of justice is final. By recognizing the

*In other words, they are no longer subject to the principle of paternalism.

finality of moral and religious obligations expressed in equal liberty of conscience, an individual cannot trade any portion of this liberty for greater social and economic benefits. Such bartering would not be unfair, since all would be equally disadvantaged. Nevertheless, a negotiator would not be tempted to reduce the extent of liberty of conscience. As favourable conditions are assumed, he knows his essential needs have been, or can be, fulfilled, and therefore his priorities lie in advancing his conception of liberty as best he can. Extra income and wealth are poor compensation for the sacrifice of certain moral or religious beliefs. Equal liberty of conscience is the only possible answer.

All three aspects of the argument for liberty of conscience are derived from the perspective of the original position. They are not based on " . . . practical necessities or reasons of state . . . [, nor do they] . . . rely on any special metaphysical or philosophical doctrines." ²³

Rawls' intentions are best summarized in his own words:

My aim has been to indicate not only that the principles of justice fit our considered judgments but also that they provide the strongest argument for freedom . . . [L]iberty of conscience . . . should not be founded on philosophical or ethical skepticism, nor on indifference to religious and moral interests. The principles of justice define an appropriate path between dogmatism and intolerance on the one side, and a reductionism which regards religion and morality as mere preferences on the other. ²⁴

According to Rawls, the lines of reasoning used for liberty of conscience can be extended to all other basic liberties. The result of this process is the principle of

liberty. Because these liberties safeguard important interests, the negotiators value them more highly than other primary social goods. Consequently, it is rational for the negotiators to best advance their index of primary goods by securing the greatest possible extent of these liberties, provided such liberties are shared equally among all members of a society.

Some commentators have objected to the argument for liberty of conscience being extended to the whole range of basic liberties. James Fishkin, for example, regards Rawls' system of liberty as a heterogeneous list of liberties.²⁵ He argues that different reasons have to be given for the various liberties, particularly as the rationale for civil liberties (for example, liberty of conscience) is distinct from the rationale for political liberties (for example, the right to vote). We could imagine a situation where freedom of conscience could be guaranteed, although it would be impossible to establish political freedoms. The fundamental difference between Fishkin and Rawls is that Fishkin separates negative and positive freedoms, treating them as very different philosophical notions, while Rawls prefers to discuss the system of basic liberties as a whole. We saw in the first section of this chapter that Rawls adopts the triadic form of liberty. The extent of one freedom affects the whole system of liberty. For instance, a person's right to stand for public office is meaningless without freedom of speech and assembly. Since the liberties are connected in this way, a definition of the extent of any

basic liberty, is, in effect, a definition of the extent of the system of liberty.

According to Fishkin, even though the negotiators might not exchange liberty of conscience for greater social and economic benefits, the same cannot be said for all of the other liberties on Rawls' list. This is incorrect. Since the basic liberties are not completely independent of each other, a reduction of the extent of one liberty for more wealth or whatever will affect the whole system of liberty. For example, if a person dispenses with his right to be eligible for public office, the extent of his freedom of speech will diminish. Minor adjustments within the principle of liberty are only permitted, in certain circumstances, to enhance the system of liberty. I shall discuss the restrictions on liberty after considering the third and final argument for the priority of the principle of liberty.

The Lexical Ordering of the Two Main Principles of Justice.

The third argument is based on a negative line of reasoning. It goes as follows: once the only good reason against the priority of the principle of liberty has been removed, its priority is both possible and necessary. Rawls does not specifically use this argument to establish the priority of liberty, but it is implicit in his theory. Of course, the third argument alone cannot determine the priority of the principle of liberty, for there is the assumption that other independent reasons for the principle's priority have been (or can be) provided. The arguments based on self-respect and liberty of conscience satisfy this

requirement.

Whether a society is in favourable or unfavourable circumstances is critically important when deciding which theory of justice, general or special, is more appropriate. The degree of favourability is mainly judged by economic factors. A certain amount of food, clothing, shelter and either income or some source of monetary payment is essential for any member of society. As the general economic conditions improve in society, a stage is reached where the worst-off representative man's most urgent needs can be fulfilled. Henry Shue calls this stage the 'date of economic adequacy'.²⁶ In such a situation, individuals are no longer totally concerned with survival, " . . . and a growing insistence upon the right to pursue our spiritual and cultural interests asserts itself."²⁷ With the increasing favourableness of circumstances " . . . the marginal significance for our good of further economic and social advantages diminishes relative to the interests of liberty" ²⁸ Self-respect begins to emerge as the principal primary good.

At the date of economic adequacy, the basic liberties contained in the first principle can be effectively exercised. All members of society can enjoy equal liberty. As Henry Shue comments: "Equal liberties are not to be guaranteed formally-until there is no one for whom the guarantee will be merely formal."²⁹ Therefore the priority of the principle of liberty can now be established, since the only obstacle to its application, unfavourable circumstances, has been overcome. Henceforth, the negotiators cannot

exchange any portion of their liberty for any other primary good, as they could do prior to the date of economic adequacy.

I mentioned in Chapter One that the principles of justice are placed in a lexical or serial order. A principle cannot be applied until those previous to it have been implemented. The principle of liberty is prior to both the principle of fair equality of opportunity and the difference principle in the lexical order. The connection between the date of economic adequacy and the lexical ordering of the principles of justice now becomes apparent. The requirements of the principle of liberty have to be fulfilled before any further principle can be established. Consequently, the first principle has to be defined, so that it has a fixed and limited application. An example will reveal why this should be so. If the right to participate in political affairs implied that every individual should have a direct say in the formulation of public policy, very few, if any, large societies could carry this out. In such cases, the failure of the first principle would prevent any further principle coming into operation. From this we can see there are good grounds for drawing a distinction between favourable and unfavourable conditions for liberty in a society. The first principle of justice can only be effectively exercised once a society has reached the date of economic adequacy, thereby allowing the second principle to be introduced. As a result, the principles of justice can only be lexically ordered when favourable circumstances are present in a society.

Restrictions on Liberty.

The basic liberties can be restricted in certain ways. The delegates at the constitutional convention have to make sure that various liberties do not conflict. Marginal exchanges within the system of liberty are permitted provided they promote the first principle of justice. All changes to the system of liberty are subject to two rules, which hold unconditionally. First, whatever changes occur affect all members of society equally. For example, if freedom of speech is extended at the expense of freedom of the press in a particular society, the rights of all members of that society are equally affected. According to the second rule, liberty can only be restricted for the sake of liberty itself. A freedom can only be limited to maintain or promote the same or any other freedom. This is because " . . . arguments for restricting liberty proceed from the principle of liberty itself." ³⁰ The implication is that liberty can never be curtailed for economic and social benefits.

Rawls uses two examples to illustrate his second rule. In the first place, certain rules of order are necessary to enhance freedom of speech. Without these rules, the liberty to communicate one's thoughts and to benefit from intelligent discussion is impaired. The restrictions result in greater benefits. But this example clouds the issue it was meant to clarify. There are two reasons: First, restrictions on freedom of speech are not necessarily derived from the principle of liberty.

itself. Secondly, these restrictions do not yield a greater extent of liberty.

First of all, as Thomas Scanlon points out, if rules of order count as restrictions on freedom of speech, many other similar restrictions must be taken into account. Limits are placed on the time and place of various gatherings, for instance, political demonstrations, parades and festivals. Scanlon suggests that "[r]egulation of these activities is normally thought to be acceptable . . . but it seems . . . difficult to maintain (without considerable stretching of the notion of a basic liberty) that in these cases basic liberties are being restricted only for the sake of the same or other basic liberties." ³¹ When considering the advantages and disadvantages of exercising freedom of speech, we do not only calculate its effect on the same freedom or other basic liberties. We take other factors into account. If a person wishes to hold a music festival, those in the neighbourhood will have to decide whether they are willing to forego a few hours sleep. Although individuals might have every right to stage a political demonstration, other citizens might fear that public buildings will be defaced in the process. In cases like these, Rawls' second rule is not the only deciding factor, since arguments for (and against) limiting freedom of speech are not derived from liberty itself.

The second point is that restrictions on freedom of speech do not result in a greater extent of liberty. The rules of debate do not secure more liberty for an

individual; they increase the benefits of that liberty. A greater worth of liberty is gained. There is some confusion here for Rawls himself seems to acknowledge this view:

"[w]ithout the acceptance of reasonable procedures of inquiry and debate, freedom of speech loses its value." ³²

(My emphasis.) When a negotiator considers whether or not to restrict freedom of speech, he does not only refer to the system of liberty itself. He uses some criterion of the value of that freedom. This is contrary to Rawls' second rule.

Rawls' second example deals with the political liberties of citizens and, in particular, the principle of participation. The extent of this principle " . . . is defined as the degree to which the procedure of (bare) majority rule is restricted by the mechanisms of constitutionalism." ³³ Various restrictions are possible. A bill of rights may specify that certain liberties are not to be decided by majority rule at all. The separation of the executive, legislative and judicial branches of government may restrict the pace of legislative change. Whatever limitations are introduced have to affect all members of society equally. This complies with Rawls' first rule. According to the second rule, the devices of constitutionalism have to promote the system of liberty. The extent of the principle of participation should be adjusted to reach " . . . the point where the danger to liberty from the marginal loss in control over those holding political power just balances the security of liberty gained by the

greater use of constitutional devices." ³⁴ Although this balancing process may extend the system of liberty, does the justification for any restrictions only appeal to liberty? Hart believes that, in cases like this, " . . . the resolution of conflict must involve consideration of the relative value of different modes of conduct, and not merely the extent or amount of freedom." ³⁵ If Hart is correct, and I think he is, this example is much the same as the first one, since a negotiator cannot adhere to Rawls' second rule. But there are instances where this rule does apply. Rawls notes that conscription for military service curtails the basic liberties of equal citizenship. ³⁶ This is justified provided the war, at home or elsewhere, is undertaken to preserve just institutions in any society. Reference is made to the extent of liberty. The restrictions imposed by conscription are allowed to prevent ever greater reductions of liberty.

The example of the principle of participation raises yet another problem. Any conflict between liberties has to be settled from the perspective of the representative equal citizen: "[t]o appeal to the interests of this representative man in applying the principles of justice is to invoke the principle of common interest." ³⁷ But how does one adopt this perspective when considering limitations on the principle of participation? The negotiators have the general facts of their society at their disposal at the constitutional convention. They have to consider the different values they place on conflicting liberties.

With so many possibilities, it is difficult to see how those in the original position can apply the principle of common interest. What is the position of the representative equal citizen? No one 'best-worst' alternative is obvious when " . . . different resolutions of the conflict [between basic liberties] will correspond to the interests of different people who will diverge over the relative value they set on conflicting liberties." 38

We have seen from the discussion of Rawls' two examples that his second rule does not apply unconditionally to all limitations on basic liberties. His argument can be re-stated in this way. There are only two possibilities: liberty can only be restricted for the sake of liberty, or liberty can be exchanged for greater social and economic benefits. The second case is to be avoided at all costs if the priority of the principle of liberty is to be maintained. But minor variations can occur within a system of liberty, and this is only to be expected at the constitutional convention. As the second possibility is ruled out, we can accommodate these variations, and preserve the priority of the principle of liberty, by adopting the first possibility. This rule cannot be used in all cases, because it is often rational for the negotiators to justify restrictions on their liberty by referring to neither social and economic benefits nor the extent of liberty.

Worth of Liberty.

Liberty and worth of liberty are distinguished as

follows: " . . . liberty is represented by the complete system of the liberties of equal citizenship, while the worth to persons and groups is proportional to their capacity to advance their ends within the framework the system defines." ³⁹ Norman Daniels questions the distinction between liberty and worth of liberty:

The point here is whether it is useful to talk about something as a 'liberty' when we cannot effectively exercise it. Is it useful to be able to say 'my liberty is equal to Rockefeller's, but I cannot exercise "it" equally'? ⁴⁰

The value of Rawls' distinction is that it separates two different notions: a principle of justice which applies, in the first instance, to the major social institutions of society, and an individual's use of that principle. Liberty is formally equal for all, although effectively it is not. In the first section of this chapter I mentioned that, in Rawls' theory, an inability to take advantage of one's liberties is not counted as a constraint definitive of liberty. It affects one's worth of liberty. Even if Daniels is correct in saying that the exclusion of economic factors from the category of constraints is arbitrary, the upshot is much the same. Whether these factors influence the formulation of the principle of liberty, or whether they form part of the worth of liberty, an individual's exercise of his 'effective liberty' depends, to some extent, on the material means and resources at his disposal.

Those who have greater power and wealth have greater means to achieve their aims. (Here I follow Barry's definition of power "as the capacity to get other people to

do what you want." ⁴¹ Wealth is defined "as the ability to obtain goods and services that you want." ⁴²) An hypothetical example can illustrate this. Two individuals, A and B, are running for public office, and oppose one another in a single member constituency. The exact office and the details of the election procedure are irrelevant. According to the first principle of justice, A and B are entitled to the same basic liberties. Let us further assume that A has ample financial means to promote his candidature, whilst B's resources are minimal. A is able to draft and distribute policy statements in the form of pamphlets and posters, to employ an army of workers to canvass voters and to hire pollsters and advisers to plan the logistics of his campaign. By contrast, B can afford none of all this. He has to virtually conduct a one-man campaign, paying personal visits on voters and relying on the support of volunteers. B might value his eligibility for public office as much as A, but he is unable to exercise his liberty as effectively.

Rawls was well aware of the type of problem I have just outlined. In his view, the constitution must be drafted so that all members of society have a fair opportunity to participate in the political process. Ideally, " . . . those similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social class." ⁴³ Any citizen should be able to offer proposals of his own for debate and to have the opportunity to assess and decide on questions of social, economic and political policy.

A number of devices could be used in an attempt to preserve a fair value of liberty for all. First, there must be some effort to establish a fair distribution of resources in a society whose economy is based on free enterprise and private ownership of property. Secondly, government sponsorship should be used to promote free discussion of matters of public importance. Finally, political parties should not be reliant on donations from private sources. Political campaigns ought to be financed by the state. It is interesting to note that this latter provision, long accepted in Sweden and West Germany, made a hesitant appearance in the 1976 United States Presidential election, and was the subject of a recent British Commission of Inquiry headed by Lord Houghton, former chairman of the Parliamentary Labour Party. ⁴⁴

Universal suffrage alone cannot maintain the fair value of political liberty. According to Miliband, in a capitalist society, "[t]he act of voting is part of a much larger political process characterized . . . by marked inequality of influence. Concentration on the act of voting itself, in which formal equality does prevail, helps to obscure that inequality . . ." ⁴⁵ Social and economic inequalities have to be regulated to maintain the effectiveness of the principle of participation.

The distinction between the formal provisions of liberty and the capacity to take advantage of them is a critical test for Rawls' conception of justice. In this chapter we have seen how the negotiators emphasize the

priority of liberty at the expense of further economic and social benefits. But there is little point in opting for the priority of the principle of liberty if many individuals will never be able to make full use of these rights. According to Rawls, no negotiator will end up in this situation. Speaking of the right to equal political participation, he comments:

In a well-governed state only a small fraction of persons may devote much of their time to politics But this fraction, whatever its size, will most likely be drawn more or less equally from all sectors of society. ⁴⁶

If any of Rawls' representative men can hold positions of political power, all members of society are able to make effective use of their basic liberties.

We have seen that the capacity to exercise liberty depends, to some extent, on a person's income, wealth and material resources. In spite of the close connection between the priority of liberty and self-respect, "[t]o some extent men's sense of their own worth may hinge upon their institutional position and their income share." ⁴⁷ Income, wealth and material resources will have to be regulated if all are to have a fair value of liberty. Social and economic inequalities are regulated by the principle of fair equality of opportunity and the difference principle. In the next chapter, we have to examine whether these principles do in fact enhance the effectiveness of liberty for all members of society.

NOTES

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3. Rawls, "Reply to Alexander and Musgrave," p. 640.
4. Robert Nozick, Anarchy, State and Utopia (Oxford: Basil Blackwell, 1974).
5. Rawls, A Theory of Justice, p. 201.
6. Ibid., p. 202.
7. Ibid., p. 63.
8. Joel Feinberg, Social Philosophy (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973), p. 13.
9. Ibid., p. 10.
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11. Ibid., p. 440.
12. Ibid., p. 426.
13. Bloom, "John Rawls Vs The Tradition of Political Philosophy," p. 654.
14. Rawls, A Theory of Justice, p. 178.
15. Henry Shue, "Liberty and Self-Respect," Ethics, 85 (April, 1975), p. 199.
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17. Nozick, Anarchy, State and Utopia, p. 240.
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20. Rawls, A Theory of Justice, p. 219.

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21. Benjamin Barber, "Justifying Justice: Problems of Psychology, Politics and Measurement in Rawls," in Reading Rawls, ed. by Norman Daniels (Blackwell, 1975), pp. 311-312.
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27. Rawls, A Theory of Justice, p. 543.
28. Ibid., p. 542.
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30. Rawls, A Theory of Justice, p. 242.
31. T. M. Scanlon, "Rawls' Theory of Justice," in Reading Rawls, ed. by Norman Daniels (Blackwell, 1975), p. 184.
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33. Ibid., p. 228.
34. Ibid., p. 230.
35. H. L. A. Hart, "Rawls on Liberty and its Priority," in Reading Rawls, ed. by Norman Daniels, (Blackwell, 1975), p. 240.
36. Rawls, A Theory of Justice, p. 380.
37. Ibid., p. 246.
38. Hart, "Rawls on Liberty and its Priority," p. 241.
39. Rawls, A Theory of Justice, p. 204.

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40. Daniels, "Equal Liberty and Unequal Worth of Liberty," p. 259.
41. Barry, The Liberal Theory of Justice, p. 30.
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44. The Argus, Aug. 30, 1976.
45. Ralph Miliband, The State in Capitalist Society (London: Weidenfeld and Nicholson, 1969), p. 194.
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CHAPTER FOUR

THE PRINCIPLE OF FAIR EQUALITY OF OPPORTUNITY

AND THE DIFFERENCE PRINCIPLE

The Principle of Fair Equality of Opportunity.

The principle of fair equality of opportunity is second in the lexical order of the principles of justice. It is, therefore, the important link between the first and third ranked principles, namely, the principle of liberty and the difference principle. Rawls states " . . . that the role of the principle of fair equality of opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range." ¹ After choosing the first principle, a negotiator has to protect two important interests. First, he has to be sure of exercising his basic liberties effectively. Secondly, a negotiator, who wishes to enhance his worth, has to safeguard whatever chances he might have to increase his share of economic and social benefits. In Rawls' opinion, the principle of fair equality of opportunity satisfies both requirements.

When speaking of formal equality of opportunity, we mean, to use Rawls' phrase, " . . . careers are open to talents"; that is, " . . . positions are open to those able and willing to strive for them." ² Positions, in this context, are " . . . positions of authority and offices of command . . ." in society. ³ In principle, everyone

has equal access to these positions, but, in effect, this is not so, since individuals differ in natural talents and abilities. Furthermore, the development of such assets is often influenced by social circumstances (for example, wealth). Those who advocate formal equality of opportunity pay no attention to the principle of redress; that is

" . . . the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for." ⁴

By contrast, the negotiators accept both the provisions of formal equality of opportunity and the principle of redress. Careers are open to talents, but all should have a fair chance to gain access to positions of authority. The principle of fair equality of opportunity expresses this view:

. . . assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. ⁵

The negotiators realize this may not be the most efficient principle. Everyone's situation might be improved if certain groups were assigned to, and others excluded from, specific positions. In some respects, Plato's division of classes and functions is an example of this arrangement. The negotiators, behind the veil of ignorance, would consider the worst possible outcome. It is not worth

exchanging opportunities for benefits provided by the privileged since the disadvantaged, who debarred themselves from holding any position of authority, would be " . . . excluded from certain external rewards of office such as wealth and privilege . . . [, as well as prevented] from experiencing the realization of self which comes from a skillful and devoted exercise of social duties." ⁶ In addition, the negotiators are constrained by their choice of the principle of liberty. All individuals cannot exercise their liberties effectively or increase their worth if some are automatically excluded from holding particular positions. They can best protect their basic liberties and advance their index of primary goods by accepting the principle of fair equality of opportunity for all.

Nevertheless, the negotiators do envisage the possibility of restricting this principle on occasions. Part (a) of the Second Priority Rule reads: " an inequality of opportunity must enhance the opportunities of those with the lesser opportunity." ⁷ An inequality must favour the less advantaged, and not everyone, as was the case above. The attempt to eradicate inequalities of opportunity might interfere with the social system and the operations of the economy to such an extent, that the opportunities of the disadvantaged might eventually turn out to be even more severely limited. Opportunities are only restricted for the sake of greater long-term opportunities, and not for further social and economic benefits.

The principle of fair equality of opportunity is

prior to the difference principle. When formulating an opportunity principle, a negotiator knows that he might have a low index of primary goods. He realizes there could be good reasons for an unequal distribution of social and economic benefits. But these disparities can be reduced if fair equality of opportunity has absolute weight over the regulation of material means and resources. From the negotiator's point of view, it is rational for the principle of fair equality of opportunity to be the second of the lexically ordered principles of justice.

A society's government has an important role to play in establishing the principle of fair equality of opportunity. Those who have similar abilities and motivation have to be given equal chances of education. Either subsidized private schools or a system of public schooling, or even both, will have to be introduced. Everyone has to be assured of free choice of employment. Rawls believes that this can only be achieved if the policies and practices of firms and associations are kept under close surveillance to maintain careers open to talents and to prevent the formation of monopolies. In order to ensure fair equality of opportunity for all, the government guarantees a social minimum in some form of payment or another (for example, negative income tax). The details of these background institutions are worked out at the stage of the legislative assembly, where the negotiators are constrained by the principles of justice and a just constitution. Nevertheless, a negotiator still has to

consider the implications of applying this principle when first formulating it behind the full veil of ignorance. At a first glance, it appears that a large bureaucracy with considerable powers will be required to enforce fair equality of opportunity for all. Considerable efficiency might have to be sacrificed for justice, and if this is so, Rawls' priority rule for restricting opportunities will probably come into operation.

James Coleman raises two potentially serious problems for the principle of fair equality of opportunity.⁸ We have seen that the viability of this principle depends, to quite a large extent, on equality of opportunity in education. Coleman draws on the experience of an extensive research programme to question the adequacy of Rawls' provisions for education.⁹ There is an incompatibility between the equal resources of the schools and the inequality of resources held by families. Consequently,

. . . inequality of opportunity is the starting point, brought about through the unequal family resources available to different children. Effective reduction in inequality of opportunity can only come about by increasing the ratio of public to private resource inputs to education, since the public inputs are equalizing and the private ones are unequalizing.¹⁰

We are now faced with a dilemma. If continual emphasis is placed on increasing public resources, inequality of educational opportunity can be reduced, but it can never be eradicated as long as children come from differing family environments. According to Coleman, a child's achievements at school are strongly influenced by the care and attention

he experiences at home. His reading and spelling skills, in fact his performance at school in general, is related to the patience, guidance and encouragement given by his parents. Equality of educational opportunity will only be achieved when the source of inequality is completely removed. In other words, the family unit will have to be abandoned: " . . . the equalizing institutions must invade the home, pluck the child from his unequalizing environment, and subject him to a common equalizing environment." ¹¹

Before discussing Rawls' response to this dilemma, it is worth noting that Coleman's views on education have been questioned. Steven Klees and Kenneth Strike state: " . . . the empirical evidence on which Coleman rests his claim that the family environment contributes more substantially to success in school than does the school environment is still quite controversial." ¹² (My emphasis.) Present knowledge indicates that schools are becoming increasingly effective in achieving equality of educational opportunity, and can become even more so, without requiring the abolition of the family unit. Furthermore, Coleman has not taken account of more recent research undertaken by Jencks and others. ¹³ They " . . . conclude that neither the family environment nor school environment substantially affect an individual's income or job status." ¹⁴ (My emphasis.) As a result, if we believe Jencks' group " . . . Coleman's discussion of equality of opportunities is irrelevant to the demand of the principle of justice for fair equality of opportunity, since an institution (family or school) which affects neither the distribution of wealth nor

position cannot violate Rawls' second principle." ¹⁵
 Even if we ignore Jencks' results, family environments would be more equal in a Rawlsian society than in any present one; thus, Coleman's objections can be ignored.

Coleman's reply to Klees and Strike is extremely evasive: " . . . [Klees and Strike] must choose between their argument that schools are so effective that they can overcome educational inequalities arising from the family . . . , and their argument, following Jencks, that schools are ineffective." ¹⁶ I have quoted at length from these sources for two very different reasons. First of all, the negotiators are entitled to know general information; consequently, they will be aware of the major differences of opinion over equality of education. They have to take this into account when considering the viability of the principle of fair equality of opportunity as opposed to, say, formal equality of opportunity. Secondly, Coleman's critics have not conclusively refuted his fundamental point; if there are any differences in environment between families, some inequality of educational opportunity must result. The emphasis I have added to some of the recent quotes reveals that perhaps the family environment is no more important than the school environment, and possibly, neither of these environments may affect a person's income or job status; but, we cannot conclude, on this basis, that the family environment is completely irrelevant for educational opportunity. Coleman's dilemma still stands; or, at least, a negotiator cannot afford to ignore it.

We saw that, according to Coleman, Rawls either has to permit inequality of educational opportunity, or, if this is unacceptable, to equalize it by breaking up the family unit. In Coleman's opinion, there is some evidence to suggest that the negotiators will select the abolition of the family:

Given Rawls's conception, that the social contract places in the hands of a disembodied central agent all primary goods, it is difficult to see how that agent could do less, in following Rawls's principle of equality of opportunity, than to remove the child from the family and place him in an environment that will be effectively equal, and not only formally so. ¹⁷

Is the separation of children and parents compatible with the first principle of justice? This is the main question a negotiator has to answer. Coleman suggests that the principle of liberty would not be violated, since the reduced liberty of the parents would be offset by the child's increased liberty once he is no longer subject to the constrictions of the parental home. Of course, the greater educational opportunities a child receives may not counter-balance other possible disadvantages (for example, more impersonal care and attention). But the negotiators cannot permit exchange of liberty between parent and child. The principle of paternalism states: "[w]e must choose for others as we have reason to believe they would choose for themselves if they were at the age of reason and deciding rationally." ¹⁸ A parent cannot consider a trade-off of liberty between himself and his child; the liberties and opportunities of the child are more important.

Rawls admits that the family unit limits the effectiveness of fair equality of opportunity for all:

Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equal opportunity inclines in this direction. But within the context of the theory of justice as a whole, there is much less urgency to take this course. The acknowledgement of the difference principle redefines the grounds for social inequalities as conceived in the system of liberal equality . . . ¹⁹

But a negotiator cannot regard the theory of justice as a whole before the completion of the third stage; that is, the legislative assembly. When formulating a principle of opportunity he cannot rely on the choice of background institutions to be chosen in the future. As we saw in Chapter One, finality is one of the constraints of the concept of right. The principles of justice are considered as the final court of appeal. It is the principles themselves that determine what is just or unjust. The background institutions can only play a supportive role. Consequently, a negotiator who is formulating a principle of opportunity, has to assess, at this stage, the effectiveness of fair equality of opportunity. If, as Rawls suggests, he is not prepared to abolish the family, opportunities can never be effectively equal for all.

According to James Fishkin, the resolution of this dilemma is unsatisfactory. ²⁰ In terms of Rawls' definition

. . . the second principle only requires equal life prospects in all sectors of society for those similarly endowed and motivated. If there are variations among families in the same sector in how they shape the child's aspirations, then while

fair equality of opportunity may obtain between sectors, equal chances between individuals will not. ²¹

Differences among families in the same sector would be tolerated as long as opportunities between sectors are equalized. By selecting fair equality of opportunity, a negotiator will be taking the risk of turning out to be a member of a disadvantaged family within a sector. If a negotiator takes this chance, he has not followed the maximin principle. This risk can only be avoided by breaking up the family unit to ensure equal life prospects for everyone. Since the negotiators have rejected this possibility, their best bet is to choose the principle of fair equality of opportunity whilst realizing that it can only be imperfectly carried out. Some risk is involved, but it is minimal compared to the far less substantial guarantees provided by formal equality of opportunity. A negotiator has, in fact, followed the maximin principle because he has calculated and selected the 'best-worst' alternative.

We can now discuss the second problem raised by Coleman. Results of empirical research have shown that the social background of classmates has some effect on educational achievement and, therefore, in the long run, influences the distribution of opportunities. As freedom of the person is one of the basic liberties secured by the first principle of justice, parents will have equal freedom in the choice of schools for their children. This could result in socially homogeneous schools, with a difference

in educational opportunities between them. (The busing of schoolchildren in some parts of the United States is a recent attempt to solve this problem.) Coleman argues that no regulation of the composition of the schools would be allowed, since liberty would be restricted for greater equality of opportunity, rather than for liberty itself. Voluntary segregation would have to be tolerated. Furthermore, this could split " . . . society into hostile self-segregated subgroups." ²²

Thomas Condon suggests that the negotiators, who are aware of the results of the research conducted by Coleman and others

. . . would all choose to create socially heterogeneous neighbourhoods and schools because first, that would be 'to everyone's advantage,' and second, we take 'unity of the self' and self-respect' (for others as well as ourselves) as fundamental goods, goods that we would all want, whatever else we wanted. ²³

This view is basically correct, although it is misleading. The arrangement of a system of schooling is more appropriately discussed at either the constitutional convention or the legislative assembly (or both) when the negotiator is aware of the relevant facts about his society. Whatever system is chosen will have to comply with the requirements of the principles of justice. Even though the extent of liberty cannot be reduced for greater equality of opportunity, we do not have to maintain, as Coleman does, that voluntary segregation has to be tolerated. According to the priority rule for opportunity, equality of opportunity can only be limited to prevent the disadvantaged from

suffering even greater inequalities. Disparities in educational opportunities cannot be permitted if they cannot be justified in terms of this priority rule.

In Coleman's estimation "Rawls's principle [of fair equality of opportunity] implies either merely a formal rather than a substantive elimination of inequalities or no limitation upon the collective use of resources to arrive at the objective." ²⁴ If anything, Rawls' principle is neither of these alternatives. It is certainly not interpreted as merely careers open to talents, the meaning of formal equality of opportunity. Since the institution of the family is not abolished, fair equality of opportunity cannot be effectively equal for everyone. The negotiators will not interpret the principle in this way if they know it cannot be implemented. As the principles of justice are lexically ordered, the principle of fair equality of opportunity has to be fully established before the difference principle can come into operation. It is irrational to choose the 'strong' interpretation of Rawls' principle when no further principle could be introduced to regulate social and economic benefits. Rawls' fair equality of opportunity is a combination of the acceptable features (that is, acceptable to the negotiators) of Coleman's alternatives. The negotiator's main task is to maximize the effectiveness of equal opportunities for all. Rawls comments:

. . . fair equality of opportunity means a certain set of institutions that assures similar chances of education and culture for persons similarly motivated and keeps positions and offices open to

all on the basis of qualities and efforts reasonably related to the relevant tasks and duties. It is these institutions that are put in jeopardy when inequalities of wealth exceed a certain limit . . . ²⁵

The role of the difference principle is to regulate social and economic inequalities so that all individuals have an equal chance to exercise both their opportunities and basic liberties.

The Difference Principle.

Both the principle of liberty and the principle of fair equality of opportunity are determined from the perspective of the representative equal citizen. By contrast, the distribution of social and economic benefits is judged in terms of the least advantaged group. There is one representative man for each stratum of society; the strata are differentiated on the basis of income and wealth, correlated with power and authority. For instance, it is assumed that those with greater wealth will generally be in positions of authority and have substantial power. Expectations are defined " . . . as the index of primary social goods which a representative individual can look forward to." ²⁶ A representative man's life prospects depend on his index of primary social goods.

The immediate problem is to define the least advantaged group. Rawls suggests two approaches. First, we can choose a particular social position (for example, an unskilled worker). All those who have the same or less than the average income of this group are the least

advantaged. Their index of primary social goods is the average of the group as a whole. The second approach is to define the least advantaged as those who have less than half of the median income and wealth. One, or some combination of, these approaches is presumed to be satisfactory. J. E. J. Altham suggests an alternative way of determining the least advantaged, but, for the purposes of my analysis, it is not necessary to question Rawls on this point.²⁷ Having defined the least fortunate group, it is only necessary to make ordinal judgements about their expectations. We can decide when the least advantaged will be better off by calculating their expectations in each of a number of possible arrangements of social and economic benefits.

The efficiency of economic and social arrangements can be judged by applying Pareto optimality to the expectations of representative men. The principle of efficiency reads as follows:

. . . an arrangement of rights and duties in the basic structure is efficient if and only if it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectations of any representative man (at least one) without at the same time lowering the expectations of some (at least one) other representative man.²⁸

But efficiency does not take priority over justice. The principle of efficiency is constrained by both the principle of liberty and the principle of fair equality of opportunity.

The negotiators have to decide how to regulate

economic and social inequalities so as to maximize the expectations of the least advantaged group. I mentioned in Chapter One that the 'benchmark' is an equal distribution of all primary social goods. Basic liberties and opportunities are already equal for all persons. Why not equalize economic and social benefits as well? But Rawls argues that the disadvantaged can receive more in an unequal system than in an equal one. By applying the maximin principle, the expectations of the least advantaged can be maximized when the negotiators choose the difference principle: "[s]ocial and economic inequalities are to be arranged so that they are . . . to the greatest benefit of the least advantaged . . . " ²⁹ The greater expectations of the better situated provide them with the incentive to undertake projects which raise the long-term prospects of the least advantaged. Every individual will benefit in one way or another if the economic system becomes more efficient, or if technological innovations proceed at a more rapid pace. This is a perfectly just scheme that is also compatible with the principle of efficiency. No change in the expectations of the more advantaged can increase the index of primary social goods of the least advantaged. It is also possible for a scheme to be just and yet not be the best arrangement. This is when the difference principle has not been fully carried out; the greater expectations of the more advantaged raise, but have not yet maximized, the expectations of the least advantaged.

Rawls assumes that the expectations of the representative men are 'chain-connected'; that is, " . . . if an advantage has the effect of raising the expectations of the lowest position, it raises the expectations of all persons in between." ³⁰ Expectations are also 'close-knit'; that is " . . . it is impossible to raise or lower the expectations of any representative man without raising or lowering the expectation of every other representative man, especially that of the least advantaged." ³¹ Consequently, everyone gains when the conditions of the difference principle are satisfied. However, Rawls does not maintain that chain-connectedness and close-knittedness always work, either in theory or in practice. But, even if these notions are incorrect, the argument for the difference principle is not affected.

There are four virtues in choosing the difference principle. First, it carries out some of the requirements of the principle of redress. Justice is prior to efficiency. Everyone's natural talents are regarded as part of the common assets of society used to promote the well-being of all persons. Secondly, as the difference principle advances the index of primary social goods of all persons it can be justified to everyone. It is a principle of mutual benefit. Thirdly, the difference principle provides an interpretation of fraternity; that is " . . . the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off." ³² Finally, in terms of the difference

NOTE

In respect of punctuation I have followed Kate L. Turabian's
A Manual for Writers of Term Papers, Theses and Dissertations
(Chicago: University of Chicago Press, 1969).

principle, persons are not only treated as means, but also as ends in themselves. According to Rawls' interpretation, "[t]o regard persons as ends in themselves in the basic design of society is to agree to forgo those gains which do not contribute to their representative expectations." ³³

Apart from being constrained by the principle of liberty and the principle of fair equality of opportunity, the conditions of the difference principle also have to be consistent with the just savings principle. The just savings principle is selected once the principles of justice for institutions have been chosen. This principle is designed to protect any one generation from totally depleting the resources of their society, thereby placing succeeding generations at a considerable disadvantage. The negotiators have to decide on a savings rate with the understanding that all generations will also save at the same rate. Real capital is accumulated and passed on from generation to generation. By capital, Rawls means " . . . not only factories and machines, and so on, but also the knowledge and culture, as well as the techniques and skills, that make possible just institutions and the fair value of liberty." ³⁴ This concludes the description of the main features of the difference principle. In order to assess the viability of this principle, I shall discuss it from two points of view; the perspectives of the least advantaged and the more advantaged.

The Perspective of the Least Advantaged.

To begin with, the difference principle is compatible with considerable inequality. The more advantaged can maximize their share of social and economic benefits even if the expectations of the least advantaged are barely increased. For instance, the more advantaged can justify an eighty percent increase in their index of primary social goods by raising the index of the least advantaged by one percent. Rawls contends that such inequalities are unlikely to occur: "[w]hile nothing guarantees that any inequalities will not be significant, there is a persistent tendency for them to be leveled down by the increasing availability of educated talent and ever widening opportunities."³⁵ Equal liberties and fair opportunities for all persons will reduce the inequalities of the difference principle. But my analysis of the principles of liberty and fair equality of opportunity revealed that an individual's ability to make use of his basic liberties and opportunities depends, to some extent, on his share of economic and social benefits. In other words, the successful application of the principles of liberty and fair equality of opportunity depend on the formulation of the difference principle. A negotiator is now faced with the following problem:

(1) equal liberties and opportunities limit social and economic inequalities, but

(2) equal liberties and opportunities are only effectively equal when social and economic inequalities are limited.

This problem can be solved by regulating social and economic inequalities without relying on the equalizing effects of the liberties and opportunities (that is, to satisfy (2) before (1)). A negotiator has to decide whether the inequalities compatible with the difference principle support, or undermine, the principles of liberty and fair equality of opportunity. This decision is particularly important to the least advantaged, since their share of economic and social benefits is less than the rest of society and, consequently, their basic liberties and opportunities will be less effective as well.

There is a second reason why Rawls believes that the inequalities of the difference principle will not be significant: " . . . the difference principle not only assumes the operation of the other principles, but it presupposes as well a certain theory of social institutions." ³⁶ If a competitive economy, with or without private ownership of the means of production, and an open class system is established inequalities will be kept to a minimum. The details of the background institutions are worked out at the constitutional convention and the legislative assembly. There are two replies to this argument. First, the choice of institutions is constrained by the principles of justice. If disparities are consistent with the difference principle, background institutions cannot reduce them. These institutions are only concerned with the application and maintenance of the principle. They cannot alter its conditions.

Secondly, when a negotiator is formulating principles of justice, he cannot rely on the future choice of institutions to reduce the inequalities allowed in terms of the difference principle. This would be irrational. The best and safest way to avoid these inequalities is to select a principle of justice that does not permit them. Rawls' second line of reasoning is unsatisfactory when viewed from the perspective of those behind the full veil of ignorance in the original position.

As I mentioned earlier, chain-connectedness and close-knittedness are not a fundamental part of the argument for the difference principle. All the same, it would be very useful to show that one person's increase in expectations results in an increase for all. However, Kenneth Arrow demonstrates the fallibility of close-knittedness:

On the face of it, . . . [close-knittedness] seems clearly false; there is nothing easier than to point out changes that benefit the well-off at the expense of the poor, including the least advantaged, e.g., simultaneous reduction of the income tax for high brackets and of welfare payments . . . ³⁷

The least advantaged, then, cannot rely on the greater benefits of some eventually raising their expectations; they have to ensure that their own index of primary social goods is increased whenever the index of some other group is advanced.

According to Thomas Nagel, the application of the difference principle will result in a society with meritocratic elements, although it will not resemble

Michael Young's meritocracy.³⁸ In Rawls' view, a meritocracy can come about when careers are open to talents but no attempt is made to alter a person's social and economic circumstances. The result is that "[e]quality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for influence and social position."³⁹ The difference principle prevents this situation from arising in a Rawlsian society. Everyone's talents and abilities are regarded as part of a collective asset. Although Rawls' society is competitive, the competition is advantageous to all. Competitiveness need not be correlated with conflict; in Rawls' society, competition and co-operation go hand in hand.

Even though talents and abilities in general are used for everyone's benefit, the least advantaged can still complain that a system of unequal rewards discriminates against them. Nagel comments:

If differentiated social and economic benefits are allowed to provide incentives, then the people at the top will tend to be those with certain talents and abilities, and the people at the bottom, even though they are better off than they would be otherwise, will tend to lack these qualities.⁴⁰

The system of rewards will affect the least advantaged's sense of their worth. It is not a question of envying those who are better off. It is the realization that the more advantaged are in a better position because they have superior talents, abilities and skills. The least advantaged's sense of their own worth will diminish if they are able to do very little to improve their situation and,

consequently, have to rely on others to raise their expectations. As the inequalities between the more and the least advantaged increase, so the worth of the latter is reduced. A person's self-respect does not depend solely on the liberties and opportunities that are made available to him. If we agree with Nozick that self-respect is 'other dependent' and is based on criteria that differentiate between persons, then the least advantaged cannot have the same self-respect as others if they select the difference principle. On these grounds it is irrational for the least advantaged to choose this principle if they have to forego part of their share of the principal primary good.

The unequal distribution of economic and social benefits affects the worst off person's ability to exercise his basic liberties and opportunities. Norman Daniels illustrates how inequalities in liberty compound each other:

For example, if the wealthy have greater liberty to affect the political process, then they may also acquire greater influence over the schools and what is taught in them. But the combined effects of control over the schools and the media give the wealthy vastly greater 'freedom of expression' than those less well-off. In turn, their resulting influence over public information and training produces further increases in their political effectiveness.⁴¹

In cases like these the more advantaged are acting in accordance with the principles of justice. Their use of superior talents and abilities enables them to increase their wealth and powers. But as the disparities in

social and economic benefits between the more and the least advantaged become greater, so the effectiveness of the basic liberties and opportunities of the least advantaged decreases. According to the difference principle, inequalities can increase provided the expectations of the least advantaged are raised. So the least advantaged can be in a position where their index of primary social goods is advanced, yet they are becoming increasingly unable to exercise their liberties and opportunities effectively.

We saw in the previous chapter that Rawls connects liberty and self-respect. The least advantaged will lose some measure of their self-respect, since they cannot make full use of their liberties. And in situations like this, they are fully entitled to envy the more fortunate persons. Rawls comments:

A person's lesser position as measured by the index of objective primary goods may be so great as to wound his self-respect When envy is a reaction to the loss of self-respect in circumstances where it would be unreasonable to expect someone to feel differently, I shall say that it is excusable.⁴²

As the negotiators must not promote envy and diminish their self-respect, they cannot choose a principle of justice that actually creates this situation. Once again, it is irrational for the least advantaged to select the difference principle. We have seen that this conclusion holds whether self-respect is based on liberty or on socio-economic status.

If the difference principle provides no support

for the principles of liberty and fair quality of opportunity for the least advantaged, what principle should be chosen to regulate social and economic inequalities? Since self-respect is the principal primary good, inequalities must be limited so that there is no difference between the self-respect of the more or the least disadvantaged. There are at least two possibilities. We can call these the 'strong' and 'weak' theses.⁴³ The strong thesis suggests that everyone's self-respect, basic liberties and opportunities (formal and effective) should be equal. This can only be achieved if social and economic benefits are distributed equally. We have returned to Rawls' starting point; that is, the 'benchmark of equality'. But this would provide very little incentive for those with superior talents and abilities. Would they be willing to improve the expectations of the least advantaged for little or no reward?

The alternative is the weak thesis. Robert Amdur defines this as follows: "[t]he weaker version would require only the elimination of inequalities that are great enough to cause major distortions in the political process."⁴⁴ This falls somewhere between the 'benchmark of equality' and the difference principle. Admittedly, this is imprecise. But the intuitive idea is that the least advantaged must secure their self-respect and be able to make substantial use of their liberties and opportunities. Social and economic benefits are unequally distributed so that the efforts of the more advantaged

raise the expectations of the least advantaged without reducing the latter's self-respect, basic liberties and opportunities. Social and economic inequalities are balanced against the ability to exercise liberties and opportunities. In other words, the least advantaged want to have the best of both worlds.

The Perspective of the More Advantaged.

When determining the arrangement of social and economic benefits, the negotiators only consider the interests of the least advantaged group. The expectations of the more advantaged are ignored. This is because

. . . the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule. ⁴⁵

At worst, a negotiator can turn out to be a member of the least advantaged group. Consequently, he can best advance his index of primary social goods by maximizing the expectations of this group. But a negotiator still has to view the difference principle from the perspective of the more advantaged, even if, as Rawls suggests, he is not concerned with securing more than the minimum share of social and economic benefits. The successful application of the difference principle depends on the willing co-operation of the more advantaged. They cannot be expected to comply with the conditions of the difference principle

if their rewards are outweighed by the sacrifices they make for the least advantaged.

The difference principle can only be beneficial to both the least and the more advantaged, if the least advantaged are willing to co-operate with the more advantaged, and the more advantaged are willing to co-operate with the least advantaged. The situation is symmetrical. According to Nozick, we can imagine the least advantaged saying to the more advantaged:

'Look, better endowed, you gain by cooperating with us. If you want our cooperation you'll have to accept reasonable terms. We suggest these terms: We'll cooperate with you only if we get as much as possible. That is, the terms of our cooperation should give us that maximal share such that, if it was tried to give us more, we'd end up with less. ⁴⁶

But, in order for symmetry to exist, the more advantaged are entitled to say to the least advantaged:

'Look worse endowed: you gain by cooperating with us. If you want our cooperation you'll have to accept reasonable terms. We propose these terms: We'll cooperate with you so long as we get as much as possible. That is, the terms of our cooperation should give us the maximal share such that, if it was tried to give us more, we'd end up with less. ⁴⁷

The difference principle does not satisfy this condition since the more advantaged cannot increase their index of primary social goods unless they raise the expectations of the least advantaged. The maximal share, as Nozick describes it, cannot be attained. The onus is now on Rawls to show why the more advantaged should accept the terms of the difference principle. Two reasons are given. First, " . . . it is clear that the well-being

of each depends on a scheme of social cooperation without which no one could have a satisfactory life. Secondly, we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable." ⁴⁸ But, as Nozick rightly points out, neither of these reasons indicate why the more advantaged should be satisfied with the difference principle. Are the terms of the scheme reasonable?

Peter Singer illustrates how the difference principle can discriminate against the more advantaged:

For instance, to put the matter in monetary terms, assume that a tax of 75 percent on all income over \$15,000 would, after deducting administrative and other costs, allow welfare payments to the worst-off group to be increased by only \$1 per person per year. The maximin rule would require that the tax be levied. ⁴⁹

When considering the strains of commitment, the negotiators will have to consider examples of this nature. In Chapter Two I stated that a negotiator assumes that he, as well as everyone else, will abide by the chosen principles of justice. But the principles have to be formulated so that it is reasonable to expect everyone's compliance: "[t]hey cannot enter into agreements that may have consequences they cannot keep. . . . Thus the parties must weigh with care whether they will be able to stick by their commitment in all circumstances." ⁵⁰ (My emphasis.) It seems doubtful that the more advantaged can always adhere to the difference principle when their sacrifices often outweigh their rewards. It would even be irrational for the least advantaged to choose the difference principle if they

know that the more advantaged cannot guarantee their co-operation.

We can come to the same conclusion by using a different line of reasoning. From their general information, the negotiators know that the more advantaged persons in certain societies are unwilling to give up some of their advantages in order to raise the expectations of the least advantaged. Some Marxists believe that the least advantaged cannot rely on the willing co-operation of those who are better off. Instead, the worst off can only improve their lot by employing coercive means. Richard Miller comments:

If Marxist theory is right, at least when applied to some societies, someone in the original position would foresee that the difference principle may be intolerable for him, if he turns out to be a typical member of the dominant exploitative class. ⁵¹

The more advantaged cannot agree to the difference principle if they know, from the general information at their disposal, that they are unlikely to adhere to it in all circumstances.

Since the difference principle is unacceptable to the more advantaged, we must consider how they would decide to regulate social and economic benefits. Nozick argues that the more advantaged include those whose talents and skills are often used for the benefit of all. For instance, they are largely responsible for technological change, the development of management techniques and manufacturing methods, and so on. The least advantaged benefit from all these advances, and probably have more to gain from a system of social co-operation :

than the more advantaged. Consequently,

[w]hat does follow from . . . [this] . . . conclusion is a deep suspicion of imposing, in the name of fairness, constraints upon voluntary social cooperation (and the set of holdings that arise from it) so that those already benefitting most from this general cooperation benefit even more! 52

The more advantaged believe that there are no substantial reasons in favour of regulating social and economic inequalities.

Summary.

Neither the more advantaged nor the least advantaged are satisfied with the terms of the difference principle. The least advantaged object to the inequalities inherent in it. The disparities between the more and the least advantaged increase. Consequently, the difference principle reduces the effectiveness of the basic liberties and opportunities, as well as the self-respect, of those who are worst off. By contrast, the more advantaged object to the restrictions imposed on them by the difference principle. They believe that the egalitarian tendencies of the principle will prove to be fatal, as well as disadvantageous to all members of society. The least advantaged favour equality at the expense of liberty, while the more advantaged emphasize liberty rather than equality. No one principle of justice, designed to regulate social and economic inequalities, will be acceptable to both the more and the least advantaged groups.

NOTES

1. Rawls, A Theory of Justice, p. 87.
2. Ibid., p. 66.
3. Ibid., p. 61.
4. Ibid., p. 100.
5. Ibid., p. 73.
6. Ibid., p. 84.
7. Ibid., p. 303.
8. James S. Coleman, "Inequality, Sociology and Moral Philosophy," American Journal of Sociology, 80 (November, 1974), especially pp. 749-755.
9. See James S. Coleman et al. Equality of Educational Opportunity (Washington, D. C. : Government Printing Office, 1966).
10. Coleman, "Inequality, Sociology and Moral Philosophy," p. 750.
11. Ibid., p. 751.
12. Steven J. Klees and Kenneth A. Strike, "Justice as Fairness: Coleman's Review Essay on Rawls," American Journal of Sociology, 82 (July, 1976), p. 195. They also mention that the evidence and conclusions of the 1966 report (See Note 9 above) have been disputed by S.S. Bowles and H.M. Levin, "The Determinants of Scholastic Achievement: An Appraisal of Some Recent Evidence," Journal of Human Resources, 3 (Summer, 1968), pp. 3-24.

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13. C. Jencks et al., Inequality: A Reassessment of the Effect of Family and Schooling in America (New York: Basic Books, 1972).
14. Klees and Strike, "Justice as Fairness: Coleman's Review Essay on Rawls," p. 196.
15. Ibid.
16. James S. Coleman, "Reply to Klees and Strike," American Journal of Sociology, 82 (July, 1976), p. 203.
17. Coleman, "Inequality, Sociology and Moral Philosophy," p. 752.
18. Rawls, A Theory of Justice, p. 209.
19. Ibid., p. 511.
20. James Fishkin, "Justice and Rationality: Objections to Rawls' Theory," American Political Science Review, LXIX (June, 1975), especially pp. 623-624.
21. Rawls, A Theory of Justice, p. 301.
22. Coleman, "Inequality, Sociology and Moral Philosophy," p. 753.
23. Thomas F. Condon, "Inequality, Sociology and Moral Philosophy," American Journal of Sociology, 82 (July, 1976), p. 211.
24. Coleman, "Inequality, Sociology and Moral Philosophy," p. 754.
25. Rawls, A Theory of Justice, p. 278.
26. Ibid., p. 92.

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27. J. E. J. Altham. "Rawls's Difference Principle," Philosophy, 48 (January, 1973), pp. 75-78.
28. Rawls, A Theory of Justice, p. 70.
29. Ibid., p. 302.
30. Ibid., p. 80.
31. Ibid..
32. Ibid., p. 105.
33. Ibid., p. 180.
34. Ibid., p. 288.
35. Ibid., p. 158.
36. Ibid.
37. Kenneth J. Arrow, "Some Ordinalist - Utilitarian Notes on Rawls's Theory of Justice," Journal of Philosophy, LXX (May 10, 1973), p. 252. Also see Fishkin, "Justice and Rationality: Some Objections to the Central Argument in Rawls's theory," p. 626.
38. Nagel, "Rawls on Justice," pp. 12-13, fn 6 and Michael Young, The Rise of the Meritocracy (Harmondsworth: Penguin Books, 1961).
39. Rawls, A Theory of Justice, pp. 106-107.
40. Nagel, "Rawls on Justice," p. 12, fn 6.
41. Daniels, "Equal Liberty and Unequal Worth of Liberty," p. 257.
42. Rawls, A Theory of Justice, p. 534.
43. Robert Amdur, "Rawls' Theory of Justice: Domestic and International Perspectives," World Politics, XXIX (April, 1977), p. 448.

NOTES (Cont'd)

44. Ibid.
45. Rawls, A Theory of Justice, p. 154.
46. Robert Nozick, "Distributive Justice," Philosophy and Public Affairs, 3 (Fall, 1973), p. 91.
47. Ibid.
48. Rawls, A Theory of Justice, p. 103.
49. Peter Singer, "The Right to be Rich or Poor," New York Review of Books, (6 March, 1975), p. 22.
50. Rawls, A Theory of Justice, p. 176.
51. Richard Miller, "Rawls and Marxism," in Reading Rawls ed. by Norman Daniels (Blackwell, 1975), p. 214.
52. Nozick, "Distributive Justice," p. 91.

CHAPTER FIVE

APPLICATION OF THE PRINCIPLES OF JUSTICE

In this, the final chapter, I wish to consider two of the more immediate problems that have to be overcome before Rawls' theory can be applied in any society. First, how do we distinguish between societies in favourable and unfavourable circumstances? Secondly, how does one compare and assess systems of liberty? In the last section, I shall discuss whether the principles of justice constitute a suitable standard for any society and every generation.

Favourable and Unfavourable Circumstances.

The general conception of justice is applied to societies in unfavourable circumstances, whereas the special conception pertains to these societies that are favourably situated. Before we can implement the theories of justice we have to decide whether a particular society is in favourable or unfavourable circumstances. Favourable circumstances obtain when the worst off representative man's most urgent needs can be satisfied (the date of economic adequacy). At this stage he is able to make use of his basic liberties and consequently, the principles of justice can be lexically ordered.

The first priority is to define the least advantaged group itself. I mentioned in the previous chapter

that Rawls uses the criteria of income and wealth to differentiate between the various strata of society.

According to Barber, these criteria are inadequate:

. . . it can be doubted that crude indicators like income are sufficient to measure so complex a notion as justice, particularly in modern industrial democracies. In the United States recently, blacks, middle-class students, women, the rural poor, blue-collar workers and even the 'long-suffering' middle class have vied with one another for the title 'least-advantaged'.¹

Clearly, plural societies have more difficulty in identifying the least advantaged on the basis of income alone. For instance, is the wealthy African or the poor Indian part of the least advantaged group in South Africa? The culture and the social organization of societies also have to be taken into account.

Once the least advantaged group is defined, we have to determine the level of economic adequacy for a society. Here again there is a difficulty. Brian Barry has used the aggregate national income of a society as one way of distinguishing between favourable and unfavourable circumstances.² Japan, U.S.A., E.E.C. countries, Canada, Australia and New Zealand are favourably situated. East Germany and Czechoslovakia are rated as good possibilities, while U.S.S.R., Spain*, Argentina and South Africa are somewhat problematic.

But gross national income by itself is inadequate for our purposes. Gross national product per capita is

*However, Spain's political climate has changed considerably since the publication of Barry's book.

also misleading. Barry comments:

It would not be valid to assume that two societies with the same average per capita income must have their 'worst-off representative man' at the same economic level. . . . [T] here could presumably be technical and cultural factors which would make the same average compatible with a variety of very different minima. ³

An individual's needs might be completely satisfied in an agrarian society with a subsistence economy. Yet it is quite possible for a person, who is employed, to lead an impoverished existence in a wealthy, industrialized society. We cannot establish a social minimum that is applicable to all societies. Each society has to be considered on its own merits.

The inadequacy of using income and wealth as criteria for favourableness becomes apparent when we also take the conditions for the establishment of liberty into account. Barry comments:

Is there anything in the material situation of, say, a group of nomadic Bedouin eking a bare existence from the desert or a population of poor peasant cultivators which would prevent them from being able to use personal liberty? ⁴

In a small agrarian society, persons could well be able to establish and maintain their basic liberties at a much lower standard of living than would be possible for individuals in industrialized countries.

We therefore require an in-depth analysis of the social, political and economic structure of any society in order to determine whether favourable or unfavourable circumstances prevail. Perhaps one way of overcoming

this problem would be to compile a list of factors (for example, area and population density, agricultural and industrial shares of gross domestic product, food supply, literacy, scientific capacity, school enrollment ratios, and so on⁵) so that an index of favourableness could be formulated.

The Assessment of Liberty.

The negotiators at either the constitutional convention or the legislative assembly have to specify the extent of each basic liberty to prevent various liberties from conflicting with one another. Some liberties will be restricted for the sake of others " . . . so as to yield the best total system of equal basic liberty." ⁶ The negotiators determine the best arrangement of basic liberties for their society by assessing the different systems. There are two immediate problems. A negotiator has to be able to compare the extensions of different basic liberties and to calculate the total amount of liberty for each system. ⁷ I shall use three examples to illustrate the urgency of these problems.

To simplify matters, I shall assume that a basic liberty in one system can be compared to the corresponding liberty in another; for example, freedom of speech in system 'X' can be compared to freedom of speech in system 'Y'. I shall also assume that different basic liberties in various systems can be compared; for example, freedom of speech in system 'X' can be compared with freedom of

assembly in system 'Y'. Furthermore, each and every basic liberty can be calculated on the basis of a numerical scale (ranging from zero onwards). The higher the score, the more extensive the liberty.

First of all, we can show that it is sometimes inadequate, or even misleading, to compare systems of liberty without contrasting their particular liberties. There are three systems in this example: X, Y, Z. Each system has the same three liberties, namely, a, b, c; for example, freedom of speech and assembly and the right to vote. The following scores were obtained:

X:	a=1	b=5	c=6	Total=12	Average=4
Y:	a=6	b=6	c=0	Total=12	Average=4
Z:	a=10	b=1	c=1	Total=12	Average=4

If we compare X, Y and Z by only referring to systems of liberty, as Rawls suggests, we can say very little about the merits or demerits of each arrangement. The total and average scores indicate that the systems are identical. But a completely different impression emerges when we examine the composition of each system. The balance of the liberties vary. In Z, freedom of speech is emphasized at the expense of freedom of assembly and the right to vote. By contrast, in X, freedom of assembly and the right to vote outweigh freedom of speech. How does a negotiator decide on the best arrangement for his society?

More problems become apparent when we take the first example a step further. Consider two systems of

liberty, M and N. The following scores were obtained:

M:	a=6	b=6	c=6	Total=18	Average=6
N:	a=4	b=4	c=4	Total=12	Average=4

There is no problem here at all; M is preferable to N in all respects. But some persons may not be able to make effective use of their liberties. By taking effectiveness as well as the formal (or theoretical) value of liberties into consideration, the following scores might now be obtained for M and N:

M:	a=2	b=2	c=2
N:	a=3	b=3	c=3

We now see that N has more to offer than M, even though M originally appeared to be superior. When assessing systems of liberty, a negotiator has to consider the possible disparities between the definition of basic liberties and an individual's ability to exercise them.

I am not suggesting that the above examples are indicative of how we assess liberties. But the negotiators can only apply the principle of liberty to their society if they have criteria for assessing particular liberties. Furthermore, these criteria are also necessary if we wish to determine whether societies have been successful in establishing a just system of liberty.

Limitations of the Principles.

Generality and universality are two of the formal constraints of the concept of right. The principles of justice have to be general in form; that is, they must be formulated without any reference to proper names or any other personalized particular (See Chapter Two). According to Rawls,

. . . first principles must be capable of serving as a public charter of a well-ordered society in perpetuity. Being unconditional, they always hold (under the circumstances of justice), and the knowledge of them must be open to individuals in any generation.⁸

The principles are universal in application; that is "[t]hey must hold for everyone in virtue of their being moral persons."⁹ In short, the principles of justice apply to all societies and every generation. There are two questions here. First, we must ask whether these principles are in fact appropriate for all societies. Secondly, do all generations choose the same principles of justice?

I shall use an example to illustrate the limitations of Rawls' principles in certain contexts. The Yanomamö Indians of Southern Venezuela are one of the largest unacculturated tribes in South America. Their technology is primitive and their material culture is totally dependent on the resources of the jungle. Myths, legends, and their own particular cosmology form the basis of their intellectual environment. Each village is an independent social unit and the Yanomamö pay

particular attention to developing stable alliances with neighbouring villages. Chagnon comments:

In summary, the Yanomamö have effected an adaptation to their three environments [that is, physical, sociopolitical and intellectual]. . . . [E]ach individual Yanomanö enters the world with the physical, social and ideological traditions at his disposal that will permit him to confront and adjust to the jungle, his neighbours, and the demons that cause sickness. 10

In terms of economic adequacy, the Yanomamö society is in favourable circumstances. One cannot speak of a least advantaged group in this case, since all members of society have satisfied their most urgent needs. We now have to consider whether it would be possible to apply the principle of liberty to such a society.

The Yanomamö are known as 'the fierce people'. They actually think of themselves in these terms, since one of their legends relates how they were originally born in blood. The males have a high capacity for rage and a willingness to use violence to achieve one's ends is a highly admired trait. Chagnon mentions that much of their behaviour can be described (from the point of view of Western civilization) as brutal, cruel and treacherous. The Yanomamö believe man is naturally ferocious and consequently, they continually employ the politics of brinksmanship; the males continually goad one another in an attempt to establish the credibility of their threats. Wife-beating is an accepted practice among the Yanomamö. Women expect this treatment since the frequency of minor beatings indicates a husband's measure of concern.

Rawls' principles of justice would be thoroughly inappropriate in the Yanomamö society. Self-respect is not obtained on the basis of liberty or socio-economic status. A male's self-respect depends on how fierce he is. The females are completely subservient to the males and Chagnon notes that as the women approach the age of thirty, they become cynical and seek consolation with one another. A woman's sense of worth is directly related to her inferior standing in the Yanomamö society. The Yanomamö warriors could not comply with a Rawlsian principle of liberty which does not discriminate between males and females. As the values and beliefs of the Yanomamö are so different to those of Western civilization, we cannot assess the justness of their society in terms of Rawls' principles.

Even if one should apply the general rather than the special conception of justice to the Yanomamö society, the point still remains that, according to Rawls, all societies should regard the two main principles as part of a social ideal; their goal is to implement these principles at a time when favourable conditions prevail. Rawls' principles are not therefore appropriate for all societies.

We can now consider the second problem: would all generations agree to the same two principles of justice? Steven Lukes has argued that Rawls' theory is an example of 'abstract individualism'. Lukes comments:

According to this conception, individuals are pictured abstractly as given, with given

interests, wants, purposes, needs, etc; while society and the state are pictured as sets of actual or possible arrangements which respond more or less adequately to those individuals' requirements. 11

Rawls has recently disagreed with this assessment of his theory, since " . . . the theory of a well-ordered society stresses that the interests and ends of individuals depend upon existing institutions and the principles of justice they satisfy." 12 (My emphasis.) All in all Rawls is claiming two things: (1) the negotiators base their choice of the principles of justice on current general information, and (2), these principles apply to all generations. Two problems arise.

First, the negotiators' general information will change over a period of time and radical developments could prompt a reformulation of the principles of justice. We can illustrate this. Rawls' difference principle is influenced by Pareto optimality. The negotiators select the maximin principle on the basis of present general facts and theories. It follows from Rawls' theory that a negotiator in the original position at the time of the tenth century would also choose the difference principle, in spite of the fact that the general knowledge of that time would not include Pareto's principle of efficiency. The principles of justice will only remain unaltered by the passage of time if our general facts and theories, as well as judgements, remain relatively fixed and static.

Secondly, if the principles of justice change, those in different generations may not agree on the terms

of social co-operation. Are those in a succeeding generation, who might choose different principles to the present generation, obliged to adhere to the principles that have already been established? Alternatively, are those in the present generation obliged to alter conditions so that the principles will secure the compliance of future generations? In spite of the motivational assumption in the original position and the choice of the just savings principle, Rawls has not solved the problem of justice between generations.

These conclusions should not seem surprising. A particular conception of justice cannot be an acceptable standard for all societies at all times. But these limitations do not affect the worth of Rawls' theory. As Philip Pettit comments: "in recent work on justice and morality, it is fair to say that we have had enough of universal theory. That is why Rawls's work is so interesting and so challenging; it offers a particular theory of our sense of justice." ¹³

NOTES

1. Barber, "Justifying Justice: Problems of Psychology, Politics and Measurement in Rawls," p. 303.
2. Barry, The Liberal Theory of Justice, p. 62.
3. Ibid., p. 62-63.
4. Ibid., p. 77.

NOTES (Cont'd)

5. See Charles Lewis Taylor and Michael C. Hudson, World Handbook of Social and Political Indicators (New Haven: Yale University Press, 1972).
6. Rawls, A Theory of Justice, p. 203.
7. Barry, The Liberal Theory of Justice, p. 34.
8. Rawls, A Theory of Justice, p. 131.
9. Ibid., p. 132.
10. Napoleon A. Chagnon, Yanomamö: The Fierce People (New York: Holt, Reinhart and Winston, 1968), p. 52-53.
11. Steven Lukes, Individualism (Oxford: Basil Blackwell, 1973), p. 73
12. Rawls, "Fairness to Goodness," p. 547.
13. Philip Pettit, "A Theory of Justice," Theory and Decision 4 (1974), p. 324.

APPENDIX

THE ORIGINAL POSITION AND OTHER SOCIETIES ¹

If we consider how the members of a society interact, as well as their attitudes, values, judgements and knowledge, five assumptions about human nature can be stated:

- A(i) Some interaction
- A(ii) Some shared values
- B(i) Incomplete unselfishness
- B(ii) Fallible judgement
- B(iii) Imperfect information

All five assumptions can be denied in two ways, pessimistically, in the 'e' form, and optimistically, in the 'a' form:

A(i)e	No interaction	A(i)a	Total interaction (no privacy)
A(ii)e	No shared values	A(ii)a	Total concord (no divergence of values)
B(i)e	No unselfishness (total selfishness)	B(i)a	Complete unselfish- ness
B(ii)e	No judgement (total unreasonableness)	B(ii)a	Infallible judgement (total reasonable- ness)
B(iii)e	No information	B(iii)a	Perfect information

A number of communities, ideal or otherwise, can be derived from the full set of assumptions. Of these, only

four possibilities will be mentioned here:

- | | |
|-----------------------------------|---------------------------------------|
| (1) Heaven | :A(i), A(ii), B(i)a, B(ii)a, B(iii)a. |
| (2) Kantian (or Hare-ian) society | :A(i), A(ii), B(i), B(ii)a, B(iii)a. |
| (3) Rawls' original position | :A(i), A(ii), B(i), B(ii)a, B(iii) |
| (4) Actual human society | :A(i), A(ii), B(i), B(ii), B(iii) |

I shall now attempt to justify my classification of the original position. It might seem surprising that the Kantian society and the original position are not identical, for Rawls often speaks of his theory as being based on a Kantian interpretation of a conception of justice.² Moreover, Lucas characterizes Kantian and Hare-ian societies as being one and the same. (Whether this is so, is a question I shall leave aside. For present purposes I assume Lucas' view to be correct.). The similarities between Rawls and Hare have been commented on by Barry, as well as by Hare himself.³ (For differences between Rawls' and Hare's approach to morality, see David Richards, A Theory of Reasons for Action.)⁴ Nevertheless, I have decided to place the original position and Kantian or Hare-ian societies in different categories.

Assumptions A(i) and A(ii) are essential for any communal co-existence whatsoever. Rawls acknowledges this in his account of the circumstances of justice: 'the negotiators, aware of the presence of these circumstances, realize that both a conflict and an identity of interests

between members of society are an inevitable part of the human condition.

Those who believe Rawls' negotiators to be totally selfish, because the latter are only concerned to advance their index of primary goods as much as possible, will probably suggest that B(i)e, rather than B(i), would be more appropriate for the original position. Two reasons count against this. In the first place, a negotiator considers not only himself, but also at least one member of the succeeding generation. Secondly, even if a negotiator strives to advance his own interests to the fullest possible extent, there is no reason to suggest why this should not be motivated as much by altruistic considerations as by selfishness. (Both points were discussed more fully in Chapter Two.) So B(i)e is ruled out. As we cannot say negotiators never consider their own interests, B(i)a is equally implausible. Consequently, B(i) is closer to the mark for the original position.

B(ii)a implies that the negotiators always make correct decisions. Infallibility, in Rawls' view, is assured by the rational assessment of information and argument in an original position that is fair. The original position is the key to the transition from B(ii), characteristic of an actual human society, to B(ii)a. Furthermore, the prospects of infallibility are enhanced by the method of reflective equilibrium which enables the negotiators to not only make decisions about various conceptions of justice, but also to test them. B(ii)a, then, accurately reflects

Rawls' intentions.

The difference between the Kantian, or Hare-ian, society and the original position is their interpretation of B(iii). I shall not discuss whether the Kantian and Hare-ian views are best described by B(iii)a. But it is important to see how the information available to Rawls' negotiators should be depicted in Lucas' scheme. Earlier we noted that, in order to create a situation of fairness in the initial situation, the negotiators are placed behind the veil of ignorance. In effect, they are denied certain kinds of knowledge. Consequently, they do not have perfect (in the sense of 'knowing everything there is to know') information at their disposal. Now one must be quite clear on this point. Because the negotiators are not made aware of every fact or theory, one cannot then argue that their information is either deficient or inaccurate. The correctness of the available knowledge is not questioned. In fact, this is partially accounted for by the requirements of B(ii)a. The relevance or adequateness of the information behind the veil of ignorance is not questioned here. (This was considered in Chapter Two.) All we are saying is that, if some knowledge is inadmissible in the original position, the negotiators do not have perfect information. On these grounds, the original position is more aptly characterized by B(iii). This conclusion should not be surprising for, on this score, it is identical to an actual human society. The negotiators' knowledge (B(iii)) comes from general laws and theories based, to

to some extent, on the information available to those in actual societies (B(iii)). Since the negotiators know less than members of actual societies, there would appear to be degrees of perfection, or imperfection, within the set of B(iii) itself. Certainly any theory, any amount of information, irrespective of its accuracy, which is derived from imperfect knowledge, characteristic of actual societies, has to belong to the set of B(iii) assumptions. In fact, it is difficult to see how one could ever derive a B(iii)a assumption from the set of B(iii). At any rate, one cannot do so in Rawls' case.

NOTES.

1. The following account depends, to a large extent, on the scheme set out by J.R. Lucas, The Principles of Politics (London: Oxford University Press, 1966), p. 371, as well as pp. 1-10.
2. In particular, see Rawls, A Theory of Justice, pp. 251-257.
3. See Barry, The Liberal Theory of Justice, p. 13, and R.M. Hare, "Questions of Method," in Reading Rawls: Critical Studies of A Theory of Justice, ed. by Norman Daniels (Basil Blackwell, 1975), pp. 81-107.
4. Richards, A Theory of Reasons for Action, especially pp. 83-85.

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